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THE UTTAR PRADESH LOCAL ACTS

1836-1955

(ANNOTATED)

with

Rules, Notifications and Orders, etc.

by

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Control of Rent and Eviction Act", "U. P.

Panchayat Raj Act", "U. P. Zamindari

Abolition & Land Reforms Act" &

"U. P. Municipalities Act" etc.,

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THE UTTAR PRADESH LOCAL ACTS



VOLUME III

THE INDIAN BAR COUNCILS (UTTAR PRADESH AMENDMENT) ACT, 1950¹

(U. P. Act No. XXIV of 1950)

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12. Pending acts or proceedings by or against the Allahabad Council and the Avadh Council.
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Authoritative English text² of the Indian Bar Councils (Uttar Pradesh Sanshodhan) Adhiniyam, 1950

An Act

to amend the Indian Bar Councils Act, 1926, in its application to Uttar Pradesh, for certain purposes

Whereas it is expedient to amend the Indian Bar Councils Act, 1926 in its application to Uttar Pradesh for certain purposes ;

It is hereby enacted as follows :—

1. For Statement of Objects and Reasons, please see *Uttar Pradesh Gazette (Extraordinary)*, dated March 25, 1950.
- Passed in Hindi by the Uttar Pradesh Legislative Assembly on June 2, 1950, and by the Uttar Pradesh Legislative Council on April 24,

- 1950.
- Received the assent of the President on July 20, 1950, under Article 201 of the Constitution of India and was published in the *Uttar Pradesh Gazette*, dated July 29, 1950.
2. Published in the *Uttar Pradesh Gazette*, dated July 29, 1950.

CHAPTER I

1. Short title, extent and commencement.—(1) This Act may be called the Indian Bar Councils (Uttar Pradesh Amendment) Act, 1950.

(2) It extends to the whole of Uttar Pradesh.

(3) Chapter I shall be deemed to have come into force from the sixteenth day of March, 1950 and Chapter II shall come into force at once.

2. Definitions.—In this Act, unless there is anything repugnant in the subject or context—

(a) “appointed day” and “New High Court” shall have the meaning assigned to them in the U. P. High Court (Amalgamation) Order, 1948;

(b) “Allahabad Council” and “Avadh Council” shall mean the Bar Councils established before the appointed day for the High Court of Judicature at Allahabad and the Chief Court of Avadh, respectively referred to as the existing High Courts in the aforesaid Order;

(c) “Chief Justice” means the Chief Justice of the New High Court;

(d) “the Ordinance” means the Indian Bar Councils (U. P. Amendment and Validation of Proceedings) Ordinance, 1949 promulgated on the nineteenth day of October, 1949.

3. Dissolution of the existing Bar Councils.—Notwithstanding anything contained in the Indian Bar Councils Act, 1926 (hereinafter called the Principal Act); or the U. P. High Courts (Amalgamation) Order, 1948—

(a) the “Allahabad Council” and the “Avadh Council” shall stand dissolved with effect from the date of commencement of the Ordinance;

(b) all elections to the Bar Council for the New High Court notified under notification No. 256, dated November 17, 1949, shall be and are hereby declared to be invalid in law and no Bar Council shall be deemed to have been constituted thereby; and

(c) a Bar Council shall, as soon as may be, be established for the New High Court, in accordance with the provisions of the Principal Act as amended by this Act.

4. Expiry of U. P. Ordinance No. VIII of 1949.—The provisions of Sections 6 and 24 of the U. P. General Clauses Act, 1904 shall, in so far as they are not repugnant to the provisions of this Act, apply to the expiry of the Indian Bar Councils (U. P. Amendment and Validation of Proceedings) Ordinance, 1949 as if it had been an Act repealed by an United Provinces Act.

CHAPTER II

5. Ad hoc Bar Councils.—(1) Until a Bar Council has been established for the New High Court in accordance with the provisions

of the Principal Act as amended by this Act, the Chief Justice may establish an *ad hoc* Bar Council which shall exercise such powers and perform such duties and functions conferred upon a Bar Council as the Chief Justice may, from time to time, declare.

(2) The *ad hoc* Bar Council shall consist of the Advocate-General and ten other members to be nominated by the Chief Justice from amongst the Advocates of the New High Court.

(3) The Advocate-General shall be *ex officio* Chairman of the *ad hoc* Bar Council.

(4) The quorum to constitute a meeting of the *ad hoc* Bar Council shall be four members.

(5) For purposes of Sections 12 and 13, the *ad hoc* Bar Council shall be deemed to be the Bar Council established under the Principal Act as amended by this Act.

(6) The *ad hoc* Bar Council shall cease to exist and stand dissolved on the date a Bar Council has been established in accordance with the provisions of the Principal Act as amended by this Act.

6. Amendment of Section 1 of Act XXXVIII of 1926.—In sub-section (2) of Section 1 of the Principal Act—

(a) the word “Allahabad” shall be deleted ; and

(b) after the word “Patna” the words “and the High Court of Judicature at Allahabad constituted by the U. P. High Court (Amalgamation) Order, 1948” shall be inserted.

7. Amendment of Section 4 of Act XXXVIII of 1926.—For Section 4 of the Principal Act, the following shall be substituted :

“4. *Composition of the Bar Council for the High Court, Allahabad.*—(1) The Bar Council for the High Court of Judicature at Allahabad shall consist of—

(a) the Advocate-General who shall be *ex officio* Chairman of the Bar Council ;

(b) four Advocates not being persons holding a judicial office nominated by the Chief Justice ;

(c) seven persons elected from amongst them by the Advocates of the High Court, who are resident in or have their permanent place of business in Allahabad or Lucknow ;

(d) nine persons elected from amongst them by the Advocates other than those referred to in clause (c).

(2) There shall be a Vice-Chairman of the Bar Council elected by the Council in such manner as may be prescribed.

(3) The term of office of the nominated and elected members of the Bar Council shall be six years.

(4) A member elected or nominated to fill a casual vacancy shall be elected or nominated to serve for the remainder of his predecessor's term of office.

(5) The quorum for a meeting of the Bar Council shall be six members :

Provided that the validity of any proceedings in the Bar Council shall not be called in question on account of any vacancy in the Bar Council.”

8. Amendment of Section 5 of Act XXXVIII of 1926.—For Section 5 of the Principal Act the following shall be substituted :

“5. *Election of members.*—(1) The members to be elected under clause (d) of sub-section (1) of Section 4 shall be chosen in such territorial constituencies as may be prescribed :

Provided that not more than one member shall be returned from each such constituency.

(2) There shall, for purposes of elections under clauses (c) and (d) of sub-section (1) of Section 4, be prepared in the manner prescribed—

(a) an electoral list of advocates entitled to vote under clause (c) aforesaid ;

(b) separately in respect of each territorial constituency referred to in sub-section (1), a territorial electoral list of advocates entitled to vote in such constituencies :

Provided that the first electoral lists shall be prepared by the High Court.

(3) The list prepared under sub-section (2) may, from time to time, be revised in the manner prescribed.

(4) No advocate shall be entitled to have his name included in more than one electoral list.

(5) Where an advocate is otherwise qualified to have his name included in more than one electoral list, he shall be entitled at his option exercised in the manner prescribed, to have his name entered in any one of the aforesaid electoral lists.

(6) An option exercised under sub-section (5) shall be final and cannot be revised during the continuance of the electoral list except in the manner and for reasons to be prescribed.

(7) A person ceasing to be a member by reasons of the expiry of his term of office shall, if otherwise qualified, be eligible for re-election or re-nomination.”

9. Insertion of a new Section 5-A in Act XXXVIII 1926.—After Section 5 of the Principal Act, the following shall be added as a new Section 5-A:

“5-A. *Retirement of members.*—(1) The Bar Council for the High Court of Judicature at Allahabad shall be a permanent body not subject to dissolution, but as nearly as may be one-half of the members nominated or elected under clauses (b) to (d) of sub-section (1) of Section 4 shall retire in accordance with the provisions of sub-section (2).

(2) The High Court shall, by order, make such provision as it thinks fit, by curtailing the term of office of some of the members, for securing that, as nearly as may be, one-half of the members nominated or elected under clauses (b) to (d) of sub-section (1) of Section 4 shall retire in every third year thereafter.”

10. Amendment of Section 6 of Act XXXVIII of 1926.—In Section 6 of the Principal Act—

(1) In sub-section (1)—

(a) in clause (a) the words “the method of determining in accordance with the provisions of sub-sections (2) and (3) of Section 4, the candidates who shall be declared to have been elected” shall be deleted ;

- (b) clause (b) shall be deleted ;
- (c) in sub-clause (d) the words "and the quorum necessary for the transaction of business thereat" shall be deleted.
- (d) in sub-clause (e) for the words "the respective terms of office of the chairman in cases where the chairman is to be elected and" the words "the term of office" shall be substituted.
- (2) Sub-section (4) shall be deleted.

11. Validation of proceedings, etc.—All orders made, actions or proceedings taken, directions issued or jurisdictions exercised by the Allahabad Council or the Avadh Council in the purported exercise of their powers under or in accordance with the provisions of the Principal Act or any rules framed thereunder, during the period from the appointed day till their dissolution under Section 3 shall be deemed to be as good and valid in law as if such orders, actions, proceedings, directions and jurisdictions had been made, taken, issued or exercised by the Bar Council duly established for the New High Court under the Principal Act.

12. Pending acts or proceedings by or against the Allahabad Council and the Avadh Council.—Any action or proceedings commenced by, before, or against the Allahabad Council or the Avadh Council before the date of the commencement of the Ordinance and pending on the said date may be continued by, before, or against the Bar Council for the New High Court, as if it had been an action or proceeding commenced by, before or against the Bar Council for the New High Court.

13. Assets and liabilities of the Allahabad Council and Avadh Council.—All property, funds and assets belonging to and vested in, and all liabilities and obligations incurred by or enforceable against the Allahabad Council or the Avadh Council on the date of the commencement of the Ordinance shall, with effect from the said date, be deemed to be transferred to, vested in or enforceable against the Bar Council for the New High Court.

THE INDIAN FOREST (U. P. AMENDMENT) ACT, 1951 ¹

(U. P. Act No. XVIII of 1951)

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Authoritative English Text² of the Indian Forest (Uttar Pradesh Sanshodhan) Adhiniyam, 1951

1. For Statement of Objects and Reasons please see U. P. Gazette dated April 28, 1951.

Passed in Hindi by the Uttar Pradesh Legislative Council on August 23, 1951 and by the Uttar Pradesh Legislative Assembly on September 6, 1951.

Received the assent of the Governor on September 23, 1951 under Article 200 of the Constitution of India and was published in the Uttar Pradesh Gazette dated October 6, 1951.

2. Published in the Uttar Pradesh Gazette dated October 6, 1951.

An Act

to amend the Indian Forest Act, 1927, in its application to Uttar Pradesh

Whereas it is expedient to amend the Indian Forest Act, 1927, in its application to Uttar Pradesh, for the purposes hereinafter appearing—

It is hereby enacted as follows:—

1. Short title, extent and commencement.—(1) This Act may be called the Indian Forest (U. P Amendment) Act, 1951.

(2) It extends to the whole of Uttar Pradesh.

(3) It shall come into force at once.

2. Insertion of new Section 80-A in Act XVI of 1927.—After Section 80 of the Indian Forest Act, 1927, the following shall be added as a new Section 80-A :

“80-A. The State Government may, by notification in the official *Gazette* declare that any of the provisions of or under this Act, shall apply to all or any land on the banks of canals or the sides of roads which are the property of the State Government or a local authority and thereupon such provisions shall apply accordingly.”

THE INDIAN FOREST (U. P. AMENDMENT) ACT, 1956

(U. P. Act No. 5 of 1956)

[As passed by the U. P. Legislature]

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1. Short title and commencement.
2. Insertion of a new Chapter V-A

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- in Act XVI of 1927.
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An Act

to amend the Indian Forest Act, 1927, in its application to Uttar Pradesh, for certain purposes

Whereas the Indian Forest (U. P. Amendment) Ordinance, 1955 was promulgated by the Governor to amend the Indian Forest Act, 1927, for certain purposes ;

And whereas it is expedient that the said Ordinance be replaced by an Act of the Legislature ;

It is hereby enacted in the Sixth Year of the Republic of India as follows :

1. Short title and commencement.—(1) This Act may be called the Indian Forest (U. P. Amendment) Act, 1956.

(2) It shall come and be deemed to have come into force on and with effect from the third day of December, 1955.

2. Insertion of a new Chapter V-A in Act XVI of 1927.—After Chapter V of the Indian Forest Act, 1927 the following shall be added as a new Chapter V-A :

“CHAPTER V-A

Of the Control over Forests of Claimants

38-A. *Definition.*—In this Chapter unless there is anything repugnant in the subject or context :

- (a) “Claimant” as respects any land means a person claiming to be entitled to the land or any interest therein acquired, owned, settled or possessed or purported to have been acquired, owned, settled or possessed whether under, through or by any lease or licence executed prior to the commencement of the U. P. Zamindari Abolition and Land Reforms Act, 1950, or under and in accordance with any provision of any enactment, including the said Act ;
- (b) “Forest” includes—
 - (i) any land covered by trees and shrubs, and
 - (ii) pasture lands.

38-B. *Power to regulate or prohibit breaking or clearing, etc.*—The State Government may by notification in the official *Gazette* regulate or prohibit in any forest (situate in or upon any land of a claimant)—

- (a) the breaking up or clearing of the land for cultivation or any other purpose ;
- (b) the firing or clearing of the vegetation ;
- (c) the girdling or tapping or burning of any tree or the stripping off of the bark from any tree ;
- (d) the lopping and pollarding of trees ;
- (e) the cutting, sawing, conversion or the removal of trees—

where such regulation or prohibition appears necessary—

- (i) for the conservation of trees and forests ; or
- (ii) for the improvement of grazing ; or
- (iii) for the maintenance, increase and distribution of supply of fodder, timber or fuel ; or
- (iv) for the protection of land against erosion ; or
- (v) for subserving the interests of the general public.

(2) No notification shall be made under sub-section (1) until after the issue of a notice to the claimant of the land calling on him to show cause within a reasonable period, not less than fourteen days and not exceeding thirty days, to be specified in such notice, why such notification should not be made, and until objections, if any, and any evidence he may produce in support of the same, have been heard by an officer not below the rank of an Assistant Collector of the first class appointed in that behalf and considered by the State Government.

(3) It shall be lawful for the State Government to make the notification under sub-section (1) either in respect of any particular forest or generally in respect of all forests situate in an area.

38-C. *Prohibition or regulation in emergent cases.*—Where it is proposed to issue a notification in respect of any forest or generally all the forests in any area under Section 38-B and the State Government

is satisfied that immediate action is necessary to prevent the doing of all or any of the acts mentioned in clauses (a) to (e) of sub-section (1) of the said section, it may by notification in the official *Gazette* prohibit the doing except as and in the manner specified, of such act in respect of that forest or, as the case may be, generally all forests situate in any area as may be specified and, thereupon, no person shall, notwithstanding any claim, right, agreement, custom, usage or law to the contrary, do any of the said acts in such forest or forests until expiry of six months from the date of the notification, and until the objection, if any, filed in pursuance of the notice under sub-section (2) of Section 38-B, has been heard and considered by the State Government.

38-D. *Service of notice.*—The notice under sub-section (2) of Section 38-D shall—

(a) in the case of a notification affecting an individual person (not being a corporation, firm or body of persons) be served on that person—

(i) personally by delivering or tendering to him the notice, or

(ii) by registered post, or

(iii) where the person cannot be found, by leaving an authentic copy of the notice with some adult male member of his family or by affixing such copy in some conspicuous part of the premises in which he is known to have last resided or carried on business or personally worked for gain, and

(b) in the case of a notification of a general nature in relation to all forests in an area, be served by publication in the official *Gazette* and it shall not be necessary, unless the State Government so directs, to serve the notice individually on the claimants.

38-E. *Application of Section 36 of Act XVI of 1927.*—The provisions of Section 36 shall *mutatis mutandis* apply to any regulation or prohibition notified under Section 38-B or 38-C.

38-F. *Penalties.*—Any person who—

(i) fells, girdles, lops, taps, pollards or burns any tree or strips off the bark or otherwise damages any tree, or breaks up or clears for cultivation or any other purpose, any land in the forest to which the notification under Section 38-B or 38-C relates, or

(ii) sets fire to such forest, or kindles a fire without taking all reasonable precautions to prevent its spreading, or

(iii) permits cattle to damage any such tree,
shall be punished with imprisonment for a term which may extend to six months or with fine or with both.

38-G. *Saving.*—The powers conferred by Section 38-B, 38-C, and 38-D shall be in addition to and not in derogation of any other powers conferred on any authority by or under any other provision of this Act."

3. Repeals.—The Indian Forests (U. P. Amendment) Ordinance,

1955 is hereby repealed and the provisions of Sections 6 and 24 of the U. P. General Clauses Act, 1904 shall apply as if it had been an enactment repealed by an U. P. Act.

THE UTTAR PRADESH INDIAN MEDICINE ACT, 1939

(Act No. X of 1939)

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THE SCHEDULE

THE SCHEDULE

(Received the assent of the Governor on September 12, 1939, under Section 75 of the Government of India Act, 1935, and was published on September 23, 1939).

An Act

to provide for the development of the ¹[Ayurvedic and Unani Tibbi systems of medicine] and to regulate their practice in the Uttar Pradesh.

Preamble.—Whereas it is expedient to provide for the development of the Indian systems of medicine ²[and] to regulate the practice thereof ³[* * * *];

It is hereby enacted as follows :—

Preliminary Note.—For S. O. R., see Gaz., 1938, Pt. VIII, p. 1231 ; for R. S. Com., see *ibid.*, 1939, Pt. VII (b), pp. 114-117, for discussion, see L. A. Pro., dated Feb. 24, 1939, in Vol. XIII, p. 792, dated March 31, 1939, in Vol. XVI, pp. 49-57, and dated May 8, 10, 15 and 16, 1939, in Vol. XVIII, pp. 211, 291, 356-357 and 425-491, respectively, and dated July 21, 1939, in Vol. XIX, pp. 805-806, and L. C. Pro., dated May 25, and July 5 and 6, 1939, in Vol. V, pp. 334, 542-598 and 607-645, respectively.

Legislative changes.—The words (Uttar Pradesh) and (State) were substituted for the words 'United Provinces' and 'Provincial' respectively by A. O. 1950 through out the Act.

PART I

Preliminary

1. Short title, extent and commencement.—(i) This Act may be called the Uttar Pradesh Indian Medicine Act, 1939.

(ii) It extends to the whole of the Uttar Pradesh except the Jaunsar-Bawar Pargana of the Dehra Dun District and the portion of the Mirzapur District south of the Kaimur Range.

(iii) Parts I and II of this Act shall come into force on such date as the State Government may, by notification in the official *Gazette*, appoint. Part III shall come into force on such date after the expiry of one year from the date on which Parts I and II come into force, as the State Government may notify under Section 49.

PART II

2. Definitions.—In this Act, unless there is anything repugnant in the subject or context,—

- (i) "Board" means the Board of ⁴[Ayurvedic and Unani Tibbi systems of Medicine], Uttar Pradesh constituted under Section 3.
- (ii) "[Ayurvedic and Unani Tibbi systems of medicine]" means the Ayurvedic or the Unani Tibbi system of medicine, whether supplemented or not by such modern advances as the Board may from time to time have determined.
- (iii) "[President]" means the ⁵[President] of the Board.
- ^{5a} [(iii-a) "State Government" means the Government of Uttar Pradesh ;
- (iii-b) "Faculty" means "Faculty of Ayurvedic and Unani Tibbi systems of medicine" constituted under Section 36-A.
- (iv) "Member" means a member of the Board.]
- (v) "Practitioner" means a practitioner of an ⁴[Ayurvedic and Unani Tibbi systems of medicine].
- (vi) "Prescribed" means prescribed by rules framed by the State Government in accordance with the provisions of this Act.

1. Subs. for "Indian systems of medicine" by U. P. Act VII of 1956.

2. Added by *ibid.*

3. The words "and to control the sale of medicinal herbs and drugs" delet-

ed by *ibid.*

4. Subs. by U. P. Act VII of 1956.

5. Subs. for "Chairman" by *ibid.*

5a. Inserted by *ibid.*

- (vii) "Register" means the register of Vaid and Hakims, [* * * *] maintained under Section 25.
- (viii) "Registered practitioner" means a practitioner whose name is for the time being entered in the register.
- (ix) "Registrar" means the Registrar appointed under Section 24.
- (x) "Vaidya" means a practitioner of Ayurvedic system of medicine [and surgery].
- (xi) "Hakim" means a practitioner of Unani Tibbi system of medicine [and surgery].
- (xii) [...]⁸
- (xiii) [...]⁸

3. Establishment of the Board.—The State Government shall, by notification in the official *Gazette*, establish in the manner provided in sub-section (1) of Section 5, a Board to be called the Board of [Ayurvedic and Unani Tibbi systems of medicine] Uttar Pradesh for the purpose of carrying out the provisions of this Act. Such Board shall be a body corporate and have perpetual succession and a common seal and may by the said name sue or be sued.

4. Savings for acts done by the existing Board and its dissolution.—(1) On the date the first Board is constituted under the provisions of this Act, the existing Board of Indian Medicine shall cease to exist and all its assets and liabilities shall devolve upon the Board so constituted.

(2) All acts begun or completed by the Board of Indian Medicine in existence on the date of the constitution of the first Board shall, in so far as they relate to the functions allotted to the Board constituted under this Act, be deemed to have been begun or performed by the Board constituted under this Act, and such acts may be carried on and completed by or under the authority of the Board so constituted.

¹⁰[**5. Constitution of the Board.**—(1) The Board shall consist of the following members (including the President) :

- (i) a President to be nominated by the State Government ;
- (ii) five members to be nominated by the State Government ;
- (iii) one member each from a University established by Law in Uttar Pradesh and having a Faculty concerned with the Ayurvedic or Unani Tibbi system of medicine in the manner prescribed by the Faculty ;
- (iv) two members representing Ayurvedic Educational Institutions of Uttar Pradesh to be elected, in the prescribed manner by the teachers of such Institutions as are affiliated to the Board ;
- (v) one member, representing Unani Educational Institutions of Uttar Pradesh to be elected, in the prescribed manner, by the teachers of such institutions as are affiliated to the Board ; and

6. The words "Surgeons and mid-wives" deleted by *ibid*.

7. Added by *ibid*.

8. Clauses (xii) and "(xiii)" deleted by

ibid.

9. Subs. by U. P. Act VII of 1956.

10. Subs. by S. 5 of U. P. Act VII of 1956.

- (vi) nine members (6 Vaid and 3 Hakims) to be elected, in the prescribed manner, by the registered Vaid and Hakims, respectively of Uttar Pradesh :

Provided that the President and every member to be elected or nominated, as the case may be, under clauses (ii), (iv) and (v) shall be from amongst the registered practitioners.

- (2) The Board shall elect one of its members to be the Vice-President.]

6. Nomination of members in default of election.—If any electoral body referred to in sub-section (1) of Section 5 fails, by such date as may be prescribed to elect the requisite number of member or members which it is entitled to elect, the State Government shall fill up the vacancy or vacancies by nomination of a person or persons qualified to be elected by the particular electoral body concerned.

7. Disqualifications for membership.—No person shall be qualified to be elected or nominated as a member of the Board —

- (a) who is an undischarged insolvent ;
- (b) who has been adjudicated by a competent court to be insane or of unsound mind ;
- (c) who has been convicted of an offence declared by ¹¹[State Government] to involve moral turpitude, or
- (d) whose name has been removed from the register ;
- (e) who is an employee of the Board or has directly or indirectly or by himself or a partner any share or interest in any contract with, by, or on behalf of the Board, unless in the latter case ¹¹[State Government] remove the disqualification.

8. Notifications of elections, nominations and vacancies.—Every election or nomination of a member or ¹¹[President] of the Board and every vacancy in the office of member or ¹¹[President] shall be notified in the official *Gazette*

9. ¹²[General Elections.]—There shall be general election of members of the Board before the expiry of their term or extended term, as the case may be, under Section 14, on such date or dates as the State Government may, by notification in the official *Gazette* appoint in that behalf.]

10. Disabilities for continuing as member.—(1) If any member, during the period for which he has been nominated or elected—

- (a) absents himself without sufficient cause from three consecutive ordinary meetings of the Board, or
- (b) becomes subject to any of the disqualification mentioned in Section 7, or
- (c) being a legal practitioner, appears in any suit or proceeding, civil or criminal, against the Board, or
- (d) obtains any employment under the Board or has without the

previous sanction of ¹¹[State Government] acquired directly or indirectly by himself or by a partner any share or interest in any contract with, by or on behalf of the Board.—

the Board may remove him from membership :

Provided that before removing a member under this sub-section the Board shall call for his explanation and record its finding thereon.

¹²[(2) Notwithstanding anything contained in sub-section (1) the President or any member nominated under sub-section (1) of Section 5 shall after such notice as may be prescribed, be removable by the State Government alone].

11. Power of the State Government to remove a member and Chairman of the Board.—Any member removed by the Board under the provisions of Section 10, may within ninety days from the date of his removal appeal to the State Government and the order of the State Government on any such appeal shall be final.

¹⁴[**12. Resignation of a member or President.**—(1) Any elected member may at any time resign his office by a letter addressed to the President. Such resignation after due verification shall take effect from the date on which it is accepted by the Board.

(2) A president or a member nominated under sub-section (1) of Section 5 wishing to resign may tender his resignation to the State Government under intimation to the Board. Such resignation when accepted shall be published in the official *Gazette* and shall take effect from the date notified therein.

13. Filling of casual vacancies in the office of a member or ¹⁵[**President**].—(1) If a member or ¹⁶[President] of the Board dies or resigns or from any cause whatsoever ceases to be a member or ¹⁶[President], as the case may be the vacancy so created shall be filled by a fresh election or nomination as the case may be within such period as may be prescribed.

(2) The term of office of a member or ¹⁶[President] elected or nominated to fill up the vacancy mentioned in sub-section (1) shall be the remainder of term of office of the member or ¹⁶[President] in whose place he has been so elected or appointed:

Provided that in the case of an elected member, if the vacancy is for a period of six months or less, the Board may direct that the vacancy be left unfilled until the next general election.

14. Term of office of a member.—Save as otherwise provided in this part, the term of office of the ¹⁶[President] or a member of the Board shall be three years ;

¹⁶[Provided that the State Government may, by notification in the official *Gazette*, extend, from time to time, the term of the President and all members of the Board so, however, that the total extension does not in the aggregate exceed two years :] and

¹⁷[* * *]

13. Subs. by U. P. Act VII of 1956.

14. Subs. by S. 7 of U. P. Act VII of 1956.

15. Subs. for the word "Chairman" by

ibid.

16. Add. by U. P Act XII of 1955.

17. The second proviso deleted by U. P. Act VII of 1956.

Provided also that members elected by any Chamber of the Uttar Pradesh Legislature, and the local authorities shall hold office for so long only as they continue to be members of those electoral bodies.

15. Eligibility for re-election of members.—A member shall on the expiry of his term of office be eligible for re-nomination of re-election :

¹⁸[* * *]

16. Validity of proceedings.—No disqualification of, or defect in the election or nomination of any person acting as a member of the Board or as the [President] or presiding authority of a meeting shall be deemed to vitiate any act or proceedings of the Board in which such person has taken part, if the majority of persons who took part in such act or proceedings were duly qualified members of the Board.

17. Establishment of Advisory Committees.—(1) The Board may subject to the rules made by State Government for this purpose, by a resolution in that behalf, appoint an advisory committee which may consist of as many of its own members or outsiders co-opted for that purpose, or both as it may decide, for any purpose it deems fit, and may appoint a convener, who shall preside over the meetings of such committee. In the absence of the convener, the committee may elect any of its members for this purpose.

(2) All questions at a meeting of the Committee shall be decided by the votes of the majority of the members present and voting at the meeting. In case of equality of votes, the person presiding shall have a casting vote.

(3) No business shall be transacted at any meeting of a committee when either less than two members or less than one-fourth of the members constituting the Committee, whichever is more, are present.

¹⁹**18. Quorum for a meeting of the Board.**—The quorum of the Board shall be 8 members but subject thereto the Board may act notwithstanding any vacancy in their number :

Provided that at an adjourned meeting all business postponed at the original meeting for want of quorum may be transacted if not less than five members are present.]

19. Procedure at meetings of Board.—(1) The ²¹[President] or in his absence the ²¹[Vice-President] shall preside at every meeting of the Board. In the absence of both, the members present shall elect one among themselves for this purpose.

(2) All questions at a meeting of the Board shall be decided by the votes of the majority of the members present and voting at the meeting. In case of equality of votes the member presiding shall have in addition to his vote as a member of the Board a second or casting vote.

20. Time and place of meeting of the Board.—The Board shall meet at such time and place and every meeting of the Board shall be summoned in such manner as may be provided by the regulations :

Provided that until regulations are made, it shall be lawful for the

¹⁸. The proviso deleted by *ibid.*

¹⁹. Subs. by S. 10 of U. P. Act VII of

²¹[President] to summon a meeting of the Board at such time and place as he may deem expedient by a letter addressed to each member on a clear notice of fifteen days.

21. [Deleted by Section 11 of U. P. Act VII of 1956].

22. Payment of expenses.—(1) There shall be paid to the members of the Board such travelling and other expenses ²⁰[* * * *] as may be prescribed.

(2) No member shall receive any pay or special pay :

Provided that the ²¹[President] may receive pay, allowances or emoluments, sanctioned by State Government according to prescribed rules.

23. ²¹[President's] power of control.—All officers and servants of the Board shall be under direct control and supervision of the ²¹[President] and shall abide by his orders.

24. Registrar and other officers and servants of the Board.—(1) The Board shall, with the previous approval of State Government, appoint a Registrar who shall be the Secretary to the Board. The Registrar shall receive such salary and allowance as may be prescribed by rules. The ²¹[President] may from time to time grant him leave and may temporarily appoint a person to act in his place. Any person duly appointed to act as Registrar shall be deemed to be the Registrar for all purposes of this Act.

(2) Any order of the Board appointing, punishing or removing the Registrar from his office shall be subject to the approval of the State Government.

(3) The Board may appoint such other officers and servants as may be necessary for carrying out the purposes of this Act :

Provided that the number and designations of such officers and servants, their salaries and allowances shall be subject to the previous approval of the State Government :

Provided also that the powers of the Board to punish, dismiss, discharge and remove any officer or servant of the Board shall be subject to any rules framed by the State Government in this behalf.

(4) All questions of pay, allowances, promotions, leave, pension and provident fund relating to the staff shall be governed by rules generally applicable to servants of the State Government of similar status.

(5) The Registrar or any other officer or servant appointed under this section shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code.

25. Maintenance of Register.—The [Registrar]²² shall maintain a register of Vaidyas²³ [and] Hakims, * * * * practising in the Uttar Pradesh in the prescribed form.

26. Duties of Registrar.—(1) Subject to the provisions of this Act and subject to any general and special orders of the Board, it shall be the duty of the Registrar to keep the register and discharge such

20. Deleted by S. 12 of *ibid.*

21. Subs. for "Chairman" by *ibid.*

22. Subs. for "Board" by U. P. Act

VII of 1956.

23. Inserted by *ibid.*

24. Deleted by *ibid.*

other functions as are required to be discharged by him under this Act or by any rules framed by the State Government.

(2) The Registrar shall so far as practicable keep the register correct and up-to-date and may from time to time enter therein any material alteration in the addresses or qualifications of the practitioners. He shall also remove from the register the names of the registered practitioners who die or who cease to be qualified as such.

(3) The State Government may direct that no alteration in the entries in respect of additional qualifications shall be made unless such fee as may be prescribed is paid.

(4) For the purpose of this section the Registrar may write to any registered practitioner at the address which is entered in the register to inquire whether he has ceased to practise or has changed his residence, and if no answer is received to the said letter within three months, the Registrar may issue a registered reminder, and in case no reply is received to the reminder within one month from the date of its issue, he may remove the name of the said practitioner from the register :

• Provided that the Board may if it thinks fit direct that the name of the said practitioner be re-entered in the register.

25[27. Persons entitled to be registered.—(1) Every person possessing the qualifications mentioned in the Schedule shall, subject to the provisions contained in or made under this Act and upon payment of such fees, whether in a lump sum or periodically, as may be prescribed, be entitled on an application made to the Registrar, to have his name entered in the Register. When the name of a person has been registered in accordance with the provision aforesaid he shall be granted a certificate in the prescribed form.

(2) Any person aggrieved by the order of the Registrar refusing to enter his name in the Register or to make any entry therein may, within ninety days of such refusal, appeal to the Board.

(3) The appeal shall be heard and decided by the Board in the prescribed manner.

(4) The Board may, on its own motion or on the application of any person cancel or alter any entry in the Register or order any entry in the Register if in the opinion of the Board such an entry was fraudulently or incorrectly made or obtained, or an application was wrongly refused].

28. Amendment of Schedule.—If the Board is satisfied—

(a) that a title or degree granted or qualification certified by a University, Medical Corporation, Examining Body or other institution in India is a sufficient guarantee that persons holding such a title or degree or qualification possess the knowledge or skill requisite for the efficient practice of ²⁶[Ayurvedic or Unani Tibbi systems of medicine, or]

(b) that such a title, degree, or qualification is not a sufficient guarantee as aforesaid,
it may direct—

(i) in the case mentioned in clause (a), that the possession of such title, degree or qualification shall, subject to the

provisions contained in this Act, and on payment of such fee as may be prescribed in this behalf, entitle a person to have his name entered in the register of Vaidyas, Hakims, as the case may be, or

- (ii) in the case mentioned in clause (b), that the possession of such title, degree or qualification shall not entitle a person to have his name entered in such register;

and the Schedule annexed hereto shall thereupon be deemed to have been altered accordingly.

29. Power of Board to call for information from medical institutions.—The Board shall have power to call upon the governing body or authorities of a Medical Corporation, examining body or other institutions included in or desirous of being included in the Schedule—

- (a) to furnish such reports, returns or other information as the Board may require to enable it to judge of the efficiency of the instruction given therein in medicine, surgery or midwifery; and
- (b) to provide facilities to enable a member of the Board deputed by the Board in this behalf to be present at the examinations held by such Medical Corporation, examining body or other institutions.

30. Information required of applicants for registration.—Every person who applies to have his name entered in the register of Vaidyas ²⁷[or] Hakims, must satisfy the ²⁸[Registrar], that he is possessed of some degree, title or qualification, specified in the schedule; and he must inform the Registrar of the date on which he obtained the degree, title or qualification which entitles him to claim registration under this Act, and shall furnish any other information required by the Registrar in order to enable him to discharge his duties under the Act.

31. Powers of Board to prohibit entry in, or to direct removal from, the register, etc.—(1) The Board may prohibit the entry in or order the removal from, the register of the name of any Vaidya or Hakim—

- (a) who has been sentenced by a Criminal Court in British India to imprisonment for an offence declared by Government to involve such moral turpitude as would render the entry or continuance of his name in the register undesirable, or
- (b) whom the Board or a Committee specially authorized for the purpose after inquiry (at which opportunity has been given to him to be heard in his defence and to appear either in person or by counsel, vakil, pleader or attorney, and which may, in the discretion of the Board, be held *in camera*) has found guilty of professional misconduct or other infamous conduct by a majority of at least two-thirds of the members present and voting at the meeting.

(2) The Board may direct that the name of any person against whom an order has been made under sub-section (1) shall be entered or re-entered, as the case may be, after having satisfied itself that due to lapse of time or otherwise the disability mentioned in sub-section (1) above has ceased to have any force.

32. Notice of deaths and erasure of names from register.—

(1) Every Registrar of Deaths who receives notice of the death of a person whose name he knows to be entered in the register of Vaidyas and Hakims shall forthwith transmit by post or otherwise to the Registrar of the Board a certificate of such death, signed by him and stating particulars of the time and place of death.

(2) On receipt of such certificate, or other reliable information regarding such death the Registrar shall remove the name of the deceased person from the register.

33. Penalty on unregistered person representing that he is registered.—If a person whose name is not entered in the register of Vaidyas and Hakims falsely pretends that it is so entered or uses in connexion with his name or title any words or letters representing that his name is so entered, he shall, whether any person is actually deceived by such representation or not, be punishable, on conviction by a Magistrate of the first class,²⁹[with imprisonment which may extend to six months or with fine which may extend to two hundred rupees or with both].

34. Procedure in inquiries and appeals.—For the purpose of any inquiry held under clause (b) of sub-section (1) of Section 31, the Board or the Committee, as the case may be, shall exercise the powers of a Commissioner appointed under the Public Servants (Inquiries) Act, 1850, and the provisions of Sections 5, 8 to 10, 14 to 16, 19 and 20 of the said Act shall, so far as may be, apply to every such inquiry and appeal.

35. Publication of names entered in the register of Vaidyas and Hakims.—(1) The Registrar shall, in every year and from time to time as occasion may require, on or before a date to be fixed in this behalf by the Board, cause to be published in the official *Gazette* and in such other manner as the Board may prescribe a full or supplementary list of the names for the time being entered in the register and setting forth—

(a) all names entered in the register arranged in alphabetical order;

(b) the registered address and appointment held by, or actual employment of, each person whose name is entered in the register; and

(c) the registered titles and qualifications of each such person :

Provided that the Registrar shall from time to time get published in the official *Gazette* the names of such practitioners whose names have been duly removed under any of the provisions of this Act.

(2) In any proceeding it shall be presumed that every person entered in such list is a registered practitioner and that any person not so entered is not a registered practitioner :

³⁰[* * * * *].

36. Powers and duties of the Board.—The Board shall have the following powers and duties, namely—

(1) to advise the State Government in matters relating to Ayurve-

²⁹ Subs. by U. P. Act VII of 1956.

³⁰ The Proviso deleted by S. 18 of

U. P. Act VII of 1956.

³¹ Subs. by S. 19 of *ibid.*

dic and Unani Tibbi systems of medicine including research and post-graduate education ;

(2) to accord, suspend or withdraw recognition or affiliation to Ayurvedic or Unani educational institutions on the recommendations of the Faculty ;

(3) to publish the results of the examinations conducted by the Faculty ;

(4) to grant degrees or diplomas to candidates who are successful at the Board's examination ;

(5) to levy fees laid down in regulations for admission to Board's examinations ;

(6) to allot adequate funds to the Faculty for carrying out its duties ;

(7) to perform such other functions for the development of Ayurvedic and Unani Education as may be consistent with the provisions of the Act ;

(8) to exercise such other powers as may be specified by or under this Act ; and

(9) to grant scholarship and medals to deserving students of institutions affiliated to the Board and with the sanction of State Government, to grant to students domiciled in this State scholarship, for research or special study in any Medical Institution that the Board may think fit, whether in India or abroad, and to endow chairs of Ayurvedic and Unani Tibbi Systems of Medicine and Surgery in Institutions affiliated to the Board].

³²[**36-A. "Faculty of Ayurvedic and Unani Tibbi Systems of Medicine.—**(1) For the proper discharge of its duties and functions as a teaching and examining body in the Ayurvedic and Unani Tibbi Systems of Medicine the Board shall appoint a Faculty of Ayurvedic and Unani Tibbi Systems of Medicine which shall consist of the following :

(i) The President of the Board who shall be *ex-officio* Chairman of the Faculty ;

(ii) members of the Board elected under clauses (iii), (iv) and (v) of sub-section (1) of Section 5, who shall be *ex-officio* members of the Faculty ;

(iii) one member to be elected by the members of the Board from amongst themselves ; and

(iv) the Deputy Director of Medical and Health Services, Ayurved, Uttar Pradesh.

(2) The Faculty may, with the previous approval of or at the requisition of the State Government, co-opt not more than two members for a specified duration and a specific purpose.

(3) The Faculty shall elect a Vice-Chairman from amongst its members.

(4) A person shall cease to be member of the Faculty upon his ceasing to be a member of the Board."

36-B. "Powers and duties of the Faculty.—The Faculty shall have the following powers and duties—

- (a) to prescribe courses of study in Ayurvedic and Unani Tibbi systems of medicine for imparting instructions in educational institutions affiliated to the Board ;
- (b) to hold examinations of persons who shall have pursued a course of study in an educational institution affiliated to the Board ;
- (c) to exercise general supervision over the residential and disciplinary arrangements made by the educational institutions affiliated to the Board and to make arrangement for promoting the health and general welfare of their students ;
- (d) to appoint examiners ;
- (e) to cause inspections of affiliated institutions of the Board ;
- (f) to make recommendations to the Board for the affiliation or recognition or for suspension or withdrawal of recognition or affiliation of Ayurvedic and Unani institutions ; and
- (g) Registrar shall function as the Secretary of the Faculty".

36-C. "Disagreement between the Faculty and the Board.—In the event of disagreement between the Faculty and the Board on any matter relating to Ayurvedic and Unani Education a reference shall be made by the Board to the State Government and the decision of the State Government shall be final".]

37. Making of regulations.—Subject to the provisions of this Act and to the rules framed by the State Government thereunder, the Board may ³²[after previous publication] frame regulations for regulating the following matters, namely—

- (1) (a) conditions on which institutions may be affiliated or recognized for the purposes of registration under Section 28 ;
- (b) the admission of students to the educational or instructional institutions affiliated to the Board ;
- (c) the conditions under which students shall be admitted to the degree or diploma or certificate course and to the examinations of the Board and shall be eligible for degrees, diplomas and certificates ;
- (d) the conditions of residence of the students in the educational or instructional institutions affiliated to the Board and the levying of fees for such residence ;
- (e) the number, qualifications and emoluments of teachers of the educational or instructional institutions affiliated to the Board ;
- (f) the fees to be charged for courses of study in such institutions and for admission to the examinations, degrees, diplomas and certificates of the Board ;
- (g) the conditions and mode of appointment and duties of examiners and the conduct of examinations :

Provided that in framing regulations the Board shall take into consideration the financial and other existing conditions of the institutions generally.

³²[Provided further that no regulation shall be framed under any of the clauses (a) to (g) except upon the recommendations to be made in such manner as may be prescribed by the Faculty].

- (2) (a) the time and place at which the meetings shall be held ;
- (b) the issue of notices convening such meetings ;
- (c) the conduct of business thereat ;
- (d) the salary, allowances and other conditions of service of officers and servants of the Board other than the Registrar ;
- (e) all other matters which may be necessary for the purposes of carrying out the object of this Act ;
- (3) all such regulations shall be published in the official *Gazette* ³³[and shall not take effect until they have been confirmed by the State Government].

(4) the State Government may by notification in the official *Gazette* ³⁴ [cancel or modify] any regulation.

38. Disposal of fees.—All fees received by the Board on account of registration of Vaidyas and Hakims ³⁵[* * * *] and admission to the Board's examinations ³⁶[* * * *] under this Act shall be credited to the Board and shall be applied for the purposes of this Act in accordance with the rules.

39. Qualified practitioner's certificates.—Notwithstanding anything contained in any law for the time being in force—

(1) The expression “legally qualified medical practitioner” or “duly qualified medical practitioner” or any word importing that a person is recognized by law as a medical practitioner or member of medical profession shall, in all Acts in force in the Uttar Pradesh and in all Acts of the Central Legislature (in their application to the Uttar Pradesh) in so far as such Acts relate to any of the matters specified in List II or List III in the Seventh Schedule to the Government of India Act, 1935, be deemed to include a registered practitioner.

(2) A certificate required under any law or rule having the force of law from any medical practitioner or medical officer shall be valid, if such certificate has been granted by a registered practitioner.

(3) A registered practitioner shall be eligible to hold any appointment as a physician, surgeon or other medical officer in any Ayurvedic or Unani dispensary, hospital, infirmary or lying in hospital supported by or receiving a grant from the State Government or in any public establishment, body or institution dealing with such systems of medicine.

(4) A registered practitioner shall be entitled to—

- (a) sign or authenticate a birth or death certificate required by any law or rule to be signed or authenticated by a duly qualified medical practitioner ;
- (b) sign or authenticate a medical or physical fitness certificate required by any law or rule to be signed or authenticated by a duly qualified medical practitioner ;
- (c) give evidence at any inquest or in any Court of Law as an expert under Section 45 of the Indian Evidence Act, 1872, on any matter relating to medicine, surgery or midwifery.

33. *Ins.* by S. 21 of U. P. Act VII of 1956.

34. *Subs.* for the word “cancel” by *ibid.*

35. *Deleted* by *ibid.*

40. Reservation of certain appointments to Vaidyas and Hakims who have qualified themselves from educational institutions affiliated to the Board.—Except with the special sanction of the State Government, no person other than a Vaidya or Hakim or surgeon or midwife who has qualified himself or herself from an institution affiliated to the Board, or other institutions of the State recognized by the Board for the purposes, and is a domiciled resident of this State shall be competent to hold an appointment as medical officer of health, or as physician, or surgeon or midwife or other medical officer in an Ayurvedic or Unani hospital, infirmary, dispensary, or lying-in-hospital maintained by or under the control of the State Government or a local authority :

Provided that Vaidyas and Hakims in the employ of the State Government or a local authority specified above on the date on which this Act comes into force shall continue to hold the said appointments.

41. Exemption from serving on inquests.—(1) Notwithstanding anything in any other law for the time being in force, every registered practitioner shall be exempt, if he so desires, from serving on any inquest or as a juror or assessor under the Code of Criminal Procedure, 1898.

(2) The registered practitioners shall have the same privileges as the medical practitioners registered under the Uttar Pradesh Medical Act, 1917, have under the Uttar Pradesh Excise Act, 1910, or any other Act for the time being in force.

42. Rules.—(1) The State Government may, after previous publication, from time to time make rules consistent with this Act to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, the State Government may make rules for any of the following matters :

- (a) the time at which and the place and manner in which election shall be held under Section 5 ;
- (b) regulation of elections under this Act ;
- (c) the conduct of and the maintenance of correct minutes of meetings of the Board ;
- (d) the manner in which vacancies shall be filled under Section 13 ;
- (e) the salary and allowances and other conditions of service of the Registrar ;
- (f) the form of the register of Vaidyas and Hakims, surgeons and midwives to be maintained under this Act and the classification of practitioners into two or more classes according to their qualifications ;
- (g) fees chargeable under this Act and their application ;
- (h) the manner in which appeals against the decision of the Registrar shall be heard by the Board under Section 27 ;
- (i) expenses payable to members of the Board and its Chairman ;
- (j) remuneration to be paid to the Chairman ;

- (k) the furtherance of any objects of the Board as a teaching or examining body ; and
 - (l) the furtherance of any other objects of the Board.
- (3) All such rules shall be published in the official *Gazette*.

43. Appeals to State Government from decision of Board.—(1) An appeal shall lie to the State Government from every decision of the Board under this Act, except a decision made by the Board as an appellate authority.

(2) Every appeal under sub-section (1) shall be preferred within three months of the date of such decision.

44. Bar to suit and other legal proceedings.—(1) No suit or other legal proceeding shall lie against the State Government in respect of an act done in the exercise of the powers conferred by this Act.

(2) No suit or other legal proceeding shall be maintainable against the Board or any member or any officer or servant of the Board or any person acting under the direction of the Board or of the ³⁶[President], or of any officer or servant of the Board in respect of anything done under this Act, lawfully and in good faith and with reasonable care and attention.

45. Mode of proof of Board's records.—A copy of any proceeding, receipt, application, plan, notice, order, entry in a register, or other document in the possession of the Board shall, if duly certified by the Registrar or other person authorized by the Board in this behalf, be received as *prima facie* evidence of the existence of the entry or document and shall be admitted as evidence of the entry or document and of the matters therein recorded in every case where, and to the same extent as the original entry or document would, if produced, have been admissible to prove such matters.

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46. Restriction on the summoning of Board's servants to produce documents.—No member or officer or servant of the Board shall in any legal proceeding to which the Board is not a party be required to produce any register or document or to appear as a witness to prove the matters recorded therein, unless by order of the Court made for special reasons.

47. Control of Board by State Government.—If at any time it shall appear to the State Government that the Board has failed to exercise or has exceeded or abused a power conferred upon it under this Act or has failed to perform a duty imposed upon it by this Act the State Government may, if it considers such failure, excess, or abuse to be of a serious character, notify the particulars thereof, to the Board ; and if the Board fails to remedy such default, excess or abuse within such time as may be fixed by the State Government in this behalf, the State Government may dissolve the Board and cause all or any of the powers and duties of the Board to be exercised and performed by such agency and for such period as it may think fit :

Provided that it shall take steps within six months to constitute a new Board under the provisions of this Act.

48. Court competent to try offences under this Act and cognizance of offences.—(1) No court other than the Court of a Magistrate of the first class shall take cognizance of, or try an offence under this Act.

(2) No Court shall take cognizance of, any offence under this Act except on a complaint in writing of an officer empowered by rules made in this behalf.

PART III

49. Power of the State Government to enforce the provisions of Part III.—The State Government may at any time after the expiry of one year from the date on which Parts I and II come into force, by notification published in the official *Gazette*, apply the provisions of this Part or any portion thereof to the whole or any part of the State from such date as is notified therein :

Provided that the State Government shall give wide publicity to the notification in such other manner also as it deems proper.

50. List of practitioners.—(1) After the publication of the notification mentioned in Section 49 the Registrar shall prepare and keep a list called a "list of persons in practice belonging to the indigenous system", on such date as is mentioned in the said notification.

(2) Every person, not being a person qualified for registration under this Act, who within a period of one year from the date from which this Part comes into force proves to the satisfaction of the Registrar that he has been in regular practice of the³⁷ [Ayurvedic and Unani Tibbi systems of medicine] or surgery or midwifery or any of their branches, in this State, on the date mentioned in the notification under sub-section (1) shall be entitled to have his name entered in the aforesaid list on payment of five rupees.

(3) The provisions of sub-sections (2) and (4) of Section 26, sub-sections (2), (3) and (4) of Section 27, and sub-section (1) of Section 31, shall, so far as may be, apply to this list.

51. Prohibition to practice of persons not listed.—No person other than a practitioner registered under Part II of the Act or a person whose name is entered in the list mentioned in Section 50 shall practise or hold himself out, whether directly or by implication as practising or as being prepared to practise the³⁷ [Ayurvedic and Unani Tibbi systems of medicine], surgery or midwifery:

Provided that the State Government may, by notification in the official *Gazette*, direct that the provisions of this section shall not apply to any class of persons or in a specified area.

52. Penalty.—Any person who acts in contravention of the provisions of Section 51 shall on conviction for each offence be punishable with fine, which may extend to two hundred rupees.

53. [Deleted by S. 23. of U. P. Act VII of 1956.]

54. [Deleted by S. 24 of U. P. Act VII of 1956.]

55. Conferring, granting or issuing diploma, licence, etc., by unauthorized person or institution.—(1) No person other than

an association or institution recognized or authorized by the Board under this Act shall confer, grant or issue or hold itself out as entitled to confer, grant or issue any degree, diploma, licence, certificate or other document stating or implying that the holder, grantee, or recipient is qualified ³⁸[in or otherwise entitled to practice] ³⁷Ayurvedic and Unani Tibbi systems of medicine.]

(2) Whoever contravenes the provisions of this section shall on conviction be punishable³⁸ [with imprisonment not exceeding six months or with fine which may extend to five hundred rupees or with both] and if the person so contravening is an association, every member of such association who knowingly and wilfully authorizes or permits the contravention shall on conviction be punishable ³⁸[with imprisonment not exceeding three months or with fine which may extend to two hundred rupees or with both].

56. False assumption of degree, diploma or certificates to be an offence.—Whoever voluntarily and falsely assumes or uses any title or description or any addition to his name implying that he holds a degree, diploma, licence or certificate conferred, granted or issued by any association or institution recognized or authorized by the Board under this Act or that he is qualified to practise the Indian system of medicine under the provisions of this Act, shall on conviction be punishable with fine which may extend to fifty rupees for the first offence under this section, and to fine which may extend to two hundred rupees for every subsequent offence.

THE SCHEDULE

(See Sections 27, 28, 29 and 30)

Persons who are entitled to have their names entered in the register of Vaidyas and Hakims—

1. Vaidyas or Hakims who hold a degree or certificate of any Government Ayurvedic or Unani college or school within the Uttar Pradesh or outside it, or a degree in Indian medicine or surgery or midwifery of any University established by law in India.

³⁹[2. Vaidas and Hakims who hold a degree or diploma granted by the Board].

3. Vaidyas or Hakims who have passed an examination from any Ayurvedic or Unani Institution in the Uttar Pradesh or outside it recognized by the Board for purposes of registration.

4. ⁴⁰[* * *].

MEDICAL DEPARTMENT

Miscellaneous

November 19, 1954

No. U-2697/B/V-1012(7)-54.—In exercise of the powers conferred by Section 27 and sub-section (2) of Section 42 of the U. P. Indian Medicine Act, 1939 (U. P. Act No. X of 1939), the Governor has been

38. Subs. by *ibid.*

39. Subs. by *ibid.*

40. Deleted by *ibid.*

pleased to make the following Rules, the same having been previously published under notification No. U-1527-BI/V-1012 (7) 52 dated December 4, 1953, as required by sub-section (1) of Section 42 of the same Act.

Rules under Sections 27 and 42 (2) (h)

1. An appeal under Section 27 shall be submitted in writing to the Chairman and shall state the grounds on which registration is claimed, and shall be accompanied by a fee of Rs. 5 which shall not be refundable. A true copy of the degree, certificate or diploma, on which claim for registration is based shall be filed with the appeal, if not already filed with the application for registration.
2. An appeal, when received shall be submitted by the Registrar to the Registration Committee of the Board for consideration and report.
3. The Committee may call for the original degree, certificate or diploma, etc. from the appellant for inspection and also such other documentary or oral evidence as may be considered necessary by them.
4. The Committee shall submit its report together with its recommendations to the Board.
5. The memorandum of appeal, the report and recommendations of the Committee and all other documents received in connection with the appeal shall be laid before the Board at their next meeting for final disposal.
6. The date on which the appeal is to be taken up by the Board shall be intimated to the appellant and he shall be given an opportunity to represent his case before the Board.
7. The Board shall then decide the appeal and record its reasons for agreeing or disagreeing with the decision of the Registrar and the orders of the Board shall be communicated by the Registrar in writing to the appellant within a week from the date on which the orders are passed.

UNITED PROVINCES INDUSTRIAL DISPUTES ACT, 1947¹

[U. P. Act No. XXVIII of 1947 as amended by U. P.

Act No. XXV of 1950² and No. XXIII of 1953³]

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- "3-A. Control of trade or business of a public utility service or a subsidiary undertaking.
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- India and was published in the *Uttar Pradesh Gazette Extraordinary*, dated August 21, 1950.
3. Received the assent of the President on October 5, 1953 under Article 201 of the Constitution of India and was published in the *U. P. Gaz. Extra.* dated October 9, 1953.

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Adapted and modified by the Adaptation of Laws Order, 1950.

(Passed by the U. P. Legislative Assembly on November 10, 1947 and by the United Provinces Legislative Council on November 17, 1947).

(Received the assent of the Governor-General on December 21, 1947 under Section 76 of the Government of India Act, 1935 and was published² in the U. P. Government Gazette, of January 10, 1948).

An Act

to provide for powers to prevent strikes and lock-outs, to settle industrial disputes and for other incidental matters.

Preamble.—Whereas it is necessary to provide for powers to prevent strikes and lock-outs, and for the settlement of industrial disputes and other incidental matters ;

It is hereby enacted as follows :

Prefatory Note :—The following extracts from the Statement of Objects and Reasons may be usefully noticed :—

“Shortly after coming into office, the Present Ministry introduced in the Legislature a bill known as the United Provinces Trade Disputes Bill, 1946, as was stated in the Statement of Objects and Reasons to this bill it was not comprehensive and was intended primarily to replace Rule 81-A of the Defence of India Rules as an effective measure for the prevention of strikes and lock-outs and the speedy settlement of trade disputes. For certain reasons, however, Government did not proceed with this bill at the time.

“Following the lapse of Rule 81-A of the Defence of India Rules, the Government of India enacted the Industrial Disputes Act, 1947, but this act was found inadequate to deal with the spate of strikes, lock-outs and industrial disputes occurring in the Province. Government were, therefore, compelled to promulgate the United Provinces Industrial Disputes Ordinance, 1947, as an emergency measure till more comprehensive Legislation on the subject was enacted.

“Although more than two years have passed since the termination of the war, normal life is still far from sight. There is a shortage of foodgrains and all other essential commodities and necessities of life. Maximum production is required to relieve the common want and misery. Prices continue to be rising and life has become very difficult for the common man. The loss of every working hour adds to the suffering of the community. In these circumstances, it is essential that Government should have powers for maintaining industrial peace and production and for the speedy and amicable settlement of industrial disputes. This bill, which is similar to the ordinance already in force, provides for such powers”. *Vide U. P. Gaz. Extra. dated 27th October 1947. The amending Act No. XXV of 1950 was published in U. P. Gaz. Extra. dated August 21, 1950 and came into force when it was published in U. P. Gaz.*

1. Short title, extent and commencement.—(1) This Act may be called “the United Provinces Industrial Disputes Act, 1947”.

(2) It extends³ to the whole of [Uttar Pradesh]³.

(3) It shall come into force on such date⁴ as the [State Government]⁴ may, by notification in the official *Gazette*, appoint in this behalf.

2. Definitions.—(1) In this Act the expressions “employer”, “industrial dispute”, “industry”, “lock-out”, “strike”, and “workman”, shall have the meanings respectively assigned to them in Section 2 of the Industrial Disputes Act, 1947 subject always to the modification that “industry” shall be construed to include the performance of its functions, as the case may be, by a local authority, or a “public utility service” and subject to this modification also that “industrial disputes” shall be construed not to include an industrial dispute concerning any industry specified in sub-clause (1) of clause (a) of Section 2 of the Industrial Disputes Act, 1947.

(2) “Public utility service” means—

- (i) any section of an industrial establishment, on the working of which the safety of the establishment or the workmen employed therein depends;
- (ii) any industry which supplies power, light or water to the public;
- (iii) any system of public conservancy or sanitation;
- (iv) any industry or undertaking, which the [State Government]⁴ may, if satisfied, that public emergency or public interest so requires, by notification in the official *Gazette*, declare to be a public utility service for the purposes of this Act, for such period as may be specified in the notification;

2. This Act has been extended to the areas mentioned in column I of this table under the Act or orders mentioned in column 2 and enforced

in such areas under notification, if any, mentioned in column 3 with effect from the date mentioned in column 4 against each such area :

Areas	Act or order under which extended	Notification, if any, under which enforced	Date from which enforced
1	2	3	4
1. Rampur District	Rampur (Application of Laws) Act, 1950.	..	Dec. 30, 1949.
2. Banaras District.	Banaras (Application of Laws) Order, 1949.	No. 3262 (1)/XVII, d. Nov. 30, 1949.	Nov. 30, 1949.
3. Tehri-Garhwal District.	Tehri-Garhwal (Application of Laws) Order, 1949.	No. 3262 (2)/XVII, d. Nov. 30, 1949.	Ditto.
3. Subs. by the A. O. 1950 for [the United Provinces].		date the U. P. Industrial Disputes Act, 1947 (XXVIII of 1947) came into force, see not. no. 494 (S. T.)/XVIII, d. Jan. 19, 1947, Pt. I, p. 71.	
4. The Act came into force on Feb. 1, 1948, see not. no. 495 (S. T.)/XVIII, d. Jan. 19, 1948, Pt. I, p. 71. The U. P. Ordinance no. XIII of 1947 has been withdrawn from the		5. Subs. by the A. O. 1950 for [Prov. Govt].	

provided that the period so specified shall not, in the first instance, exceed six months but may, by a like notification, be extended from time to time, by any period not exceeding six months, at any one time, if in the opinion of the [State Government]⁶ public emergency or public interest requires such extension.

(3) [State Government]⁶ means the Government of [Uttar Pradesh]⁷

Employer.—This term has been defined by Section 2 (g) of the Industrial Disputes Act 1947, which is given below :—

“Employer” means—

(i) in relation to an industry carried on by or under the authority of any department of the Central Government or a State Government, the authority prescribed in this behalf or where no authority is prescribed, the head of the department ;

(ii) in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority.

It is clear from the definition that it is not confined to industries carried on by the Government alone⁸. An employer does not cease to be so merely because he transfers some of his assets and liabilities⁹. A transferee of a concern may become an employer for the past services of the workman¹⁰, but if he purchases merely the machinery and plant, he cannot be treated as an employer¹¹.

Industrial dispute.—This term has been defined by Section 2 (k) of the Industrial Disputes Act, 1947 and the definition is quoted below :—

“Industrial dispute” means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person.

Dispute.—In this definition although “industrial dispute” has been defined, but there is no definition of “dispute”, and therefore the ordinary dictionary meaning would apply. “Dispute” means a “difference”. A demand, even made orally would be a dispute¹²; it is not necessary that the demand be made by the workmen themselves it may be made by an agent¹³. It is also not necessary that it may be made direct to the employer, it may be made before the conciliation officer¹⁴.

Any person—This expression has to be defined in the light of Section 2 (k). The dispute contemplated by Section 2 (k) is a controversy in which the workman is directly and substantially interested. It must also be a grievance felt by the workman which the employer is in a position to remedy. “Any person” cannot include a person who is not a workman, such as a foreman or a divisional head, even if their dispute is taken up by the union of workers¹⁵.

Individual—Rights.—There has been considerable controversy if an individual could raise an industrial dispute, but now the matter has been set at rest by a Full Bench decision of the Appellate Tribunal that even an individual could raise an industrial dispute¹⁶.

6. Subs. by the A. O. 1950 for [Provl. Govt].
7. Subs. by the *ibid* for [the United Provinces.]
8. *In re : Western India Automobile Association*, 1950 LLJ 245=53 CWN (FR) 59; *Birla Bros. v. Modak* ILR (1948) 2 C 209; *In re Bank Line Ltd.*, 1954 LAC 329.
9. *In re : Bharat Bank Ltd.*, 1952 (II) LLJ 420=1953 LAC 53.
10. *Bombay Garage Ltd.*, 1953 (I) LLJ 53.
11. *In re : Sri Moti Chand Silk Mills*, 1954 (I) LLJ 793.
12. *Bombay State case*, 1953 LAC 689=1952 (I) LLJ 19.
13. *U. P. Sugar Mill cases*, 1952 LAC 107=1952 (I) LLJ 615.
14. *Cinema Talkies*, 1952 LAC 233=1952 (I) LLJ 649; *Benaras Light and Power*, 1952 LAC 243=1952 (I) LLJ 649; *Press Employees Association*, 1952 (II) LLJ 490.
15. *Narendra Kumar Sen v. All India Industrial Disputes (Labour Appellate) Tribunal*, 1953 B 325; *United Commercial Bank Ltd., v. Kedar Nath Gupta*, 1952 LAC 198=1952 (I) LLJ 782. See also *Dalhousie Jute Co.* 1951 (I) LLJ 145. See also 1955 (I) LLJ 574.
16. *Swadeshi Cotton Mills*, 1953 LAC 137=1953 (I) LLJ 757. See also 1954 (II) LLJ 263. But see *Angelo Bros. Ltd., v. Biswanath Bhattacharji*, 1955 (I) LLJ 138. See also *Newspapers Ltd., Allahabad v. State Industrial Tribunal U. P.* 1954 A 516.

Industrial dispute—what is.—A dispute between employers and employees to be an industrial dispute must be between the employers and the workmen. There cannot be any industrial dispute between the employers and the employees who are not workmen¹⁷. All discharged or dismissed employees can raise an industrial dispute and the words "in connection with" widen the scope of the dispute and do not restrict it by any means¹⁸. These disputes may be divided into two classes: (1) those the cause of action arose at a time when business was carried on and (2) those the cause of action arose at a time when the business was closed. If a dispute arose before closure, it does not cease to be an industrial dispute because subsequently the industry is closed¹⁹. Where a company entrusted work to a group of persons working as coolies and when they were paid in a lump sum to be divided among themselves as per the arrangements *inter se* between them, and where the company had no control over their work or their hours of work, the dispute between the company and such persons could not be considered to be an industrial dispute²⁰. If the Government makes a reference for adjudication concerning an individual workman, the words "industrial dispute" suggest that the Government had materials before them that the dispute was taken up by other workmen of the Union. In the absence of any evidence to the contrary it shall be presumed to be an "industrial dispute"²¹.

Industry.—This term has been defined by Section 2 (j) of the Industrial Disputes Act, and for facility of reference the definition is given below:

"Industry" means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen.

The definition is very wide, and has been held to include non-profit making charitable institutions as well²². It includes also within its scope what might not strictly be called trade or business. A dispute that might arise between municipalities and their employees in branches of work that can be said to be analogous to the carrying out of a trade or a business is covered by the definition²³.

Lock-out.—This term is defined by Section 2 (l) of the Industrial Disputes Act, and for facility of reference, the definition is given below:

"Lock-out" means the closing of a place of employment or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him.

As the definition shows it is a counterpart of "strike." It does not have any effect on the conditions of service²⁴. It is necessary that there must be an amount of malice or ill-will²⁵. If it is unjustifiable the workmen are entitled to wages²⁶. A lock-out would be unjustifiable if it contravenes the provisions of Sections 22, 23 or 24 of the Industrial Disputes Act. If there is a paucity of raw material and therefore the work is temporarily suspended, it would not amount to a lock-out²⁷, nor the retrenchment of surplus labour²⁸, or refusal to permit the late comers to enter the premises²⁹.

Strike.—This term is defined in Section 2 (g) of the Industrial Disputes Act and for facility of reference the definition is given below:

"Strike" means a cessation of work by a body of persons employed in any industry acting in combination, or a concerted refusal, or a refusal under a common understanding, of any number of persons who are or have been so employed to continue to work or to accept employment.

The strike may take different forms such as: stay-in, sit-down, tool-down, pen down, where the workmen enter the premises, but do not work, or it may be a general strike, where the workmen do not even enter the place of work. Strike is illegal if it contravenes the provisions of Sections 22, 23 and 24 of the Industrial Disputes Act. If

17. *The Assam Chah Karmachari Sangha v The Management of Doolapat Tea Estate*, 1955 LAC 715.
18. *The Santa Cruz Kalina and Malad Marine Bus Service*, 1954 LAC 572.
19. *Messrs Indian Rolling Mills Co. Kanpur*, 1954 LAC 780.
20. *In re: Reference of Govt. of Andhra*, 1955 (2) LLJ 338.
21. *Lipton Co. Ltd.*, 1956 (1) LLJ 319.
22. *Vishudhananda Marwari Hospital*, 1952 LAC 562; *Western India Automobile Association*, 1951 Bom LR 58.

23. *D. N. Banerji v. P. R. Mukherjee*, 1953 SC 58=1953 (1) LLJ 195.
24. *Colliery Mazdoor Congress*, 1952 LAC 219.
25. *Ram Chandra Spinning Mills*, 1953 (1) LLJ 216; *The Hamidia Match Manufacturing Co.* 1954 Bhopal 17.
26. *Itakhoolie Tea Estate*, 1954 LAC 343 = 1954 (II) LLJ 717.
27. *Anamallais Punter Trust Ltd.*, 1952 (II) LLJ 604.
28. *Colliery Mazdoor Congress*, 1952 LAC 219.
29. *Talchar Coalfields*, 1952 LAC 594.

It is illegal, the workman must be deprived of his wages, but in the matter of discharge and reinstatement, illegal strikes and legal strikes stand on the same footing ³⁰.

Workman.—This term has been defined by Section 2 (S) of the Industrial Disputes Act, and for facility of reference the definition is given below :

“Workman” means any person employed (including an apprentice) in any industry to do any skilled or unskilled manual or clerical work for hire or reward and includes, for the purposes of any proceedings under this Act in relation to an industrial dispute, a workman discharged during that dispute, but does not include any person employed in the naval, military or air service of the Government.

A dismissed employee falls within the definition of a workman, and a dispute raised by him in connection with his non-employment does fall within the purview of the term industrial dispute ³¹.

3. Power to prevent strikes, lock-outs, etc.—If, in the opinion of the [State Government]^{31a} it is necessary or expedient so to do for securing the public safety or convenience, or the maintenance of public order or supplies and services essential to the life of the community, or for maintaining employment, it may, by general or special order, make provision—

- (a) for prohibiting, subject to the provisions of the order, strikes or lock-outs generally, or a strike or lockout in connexion with any industrial dispute ;
- (b) for requiring employers, workmen or both to observe for such period, as may be specified in the order, such terms and conditions of employment as may be determined in accordance with the order ;
- (c) for appointing industrial courts ;
- (cc) [For appointing committees, representative both of the employer and workmen for securing amity and good relations between the employer and workmen and for settling industrial disputes by conciliation ; for consultation and advice on matters relating to production, organization, welfare and efficiency]³².
- (d) for referring any industrial dispute for conciliation or adjudication in the manner provided in the order ;
- (e) for requiring any public utility service, or any subsidiary undertaking not to close or remain closed and to work or continue to work on such conditions as may be specified in the order ;
- (f) for exercising control over any public utility service, or any subsidiary undertaking by authorising any person (hereinafter referred to as an authorized controller) to exercise, with respect to such service, undertaking or part thereof such functions of control as may be specified in the order ; and, on the making of such order the service, undertaking or part, as the case may be, shall so long as the order continues to be carried on in accordance with any directions given by the authorised controller in accordance with the provisions of the order ; and every person having any

30. *Ram Krishna Iron Foundry*, 1954 LAC 73=1954 (II) LLJ 372. See also *Punjab National Bank*, 1953 LAC 1=1953 (II) LLJ 648.
31. *Newspapers Ltd., Allahabad v. State Industrial Tribunal*, U. P. 1954 A

516=1954 AWR 502 (H. C.).
31a. *Subs.* by the A. O. 1950 for [Provl. Govt].
32. *Add.* by S. 2 of U. P. Act XXV of 1950.

functions of management of such service, undertaking or part thereof shall comply with such directions ;

- (g) for any incidental or supplementary matters which appear to the [State Government]³³ necessary or expedient for the purposes of the order :

Provided that no order made under clause (b)—

- (i) shall require an employer to observe terms and conditions of employment less favourable to the workmen than those which were applicable to them at any time within three months preceding the date of the order ;
- (ii) shall, if an industrial dispute is referred for adjudication under clause (d), be enforced after the decision of the adjudicating authority is announced by or with the consent of, the [State Government]³³.

Validity.—This section was not beyond the competence of the legislature and cannot be declared *ultra vires* on the ground that it delegates legislative or rule-making power of an unspecified character to the executive government³⁴. The section does not purport to interfere, in any manner, with the right of a citizen to acquire, hold or dispose of property. It only deals with orders that might be made in relation to strikes, lock-outs, terms and conditions of employment, appointment of industrial courts, settlement of industrial disputes and closure, non-closure and exercise of control over any public utility service or other subsidiary undertaking and similar matters. It cannot, therefore, be said that the section empowers the executive government to interfere with the right of a citizen to acquire, hold or dispose of property.³⁵

Reference-Effect.—If a reference is made by the State Government to the Industrial Tribunal, and the notification clearly mentions that the State Government was satisfied that the industrial dispute existed, the High Court cannot go into the question whether that satisfaction was right or wrong. The State Government is also competent to make a reference of its own motion and when nothing was said in the notification that it was referred in pursuance of the report of the Conciliation Board, it must be held that the reference was *suo moto* and the invalidity of the report or the proceedings before the Board were of no consequence³⁶. The State Government is order to proceed under this section has to form an opinion that it is necessary or expedient to make an order under the section for securing the public safety or convenience or the maintenance of the public order or supplies and services essential to the life of the community or for maintaining employment. If the State Government comes to that opinion it is thereafter empowered to pass general or special orders making provisions for matters mentioned in clauses (a) to (g) of the section. The Act nowhere prescribes the material on which the opinion of the State Government is to be based, and it is, therefore, open to the State Government to form its opinion on any or all material or information available to it. The High Court is not competent to see whether the opinion arrived at is or is not correct³⁷. The correctness of such an opinion is not open to judicial scrutiny by courts³⁸.

Bonus-meaning.—In morden times, bonus is clearly regarded as deferred wages payable to employees which may be claimed by them as of right under the terms of employment. The granting of bonus is not an act of charity but is to be regarded in some measure as a right of the workers to share in the profits of the company³⁹.

Terms and conditions of Service-meaning.—This expression cannot be considered to be narrower than the expression "Conditions of service" used in the Government of India Act, 1935 and would therefore cover terms and conditions relating to removal and dismissal of the workmen. It also covers employment, non-

33. Subs-by the A. O. 1950 for [Provl. Govt].

34. *Basti Sugar Mills Co. v. State of U. P.* 1954 A 538 (F. B.) ; *Lakshmi Devi Sugar Mills v. U. P. Government*, 1954 A 705.

35. *Basti Sugar Mills Co. Ltd. v. State of U. P.* 1954 A 538 (F. B.).

36. *Newspapers Ltd. v. State Industrial Tribunal*, 1954 A 516.

37. *Basti Sugar Mills Co. Ltd. v. State of U. P.* 1954 A 538 (F. B.).

38. *Swadeshi Cotton Mills v. State Industrial Tribunal*, 1955 A 549.

39. *Basti Sugar Mills Co. Ltd. v. State of U. P.* 1954 A 538 (F. B.).

employment and conditions of labour. Re-instatement in service, which brings into effect continuity of previous service is also covered by the expression ⁴⁰.

Dispute withdrawn-Reference.—There is nothing in the Act laying down that a dispute once withdrawn from the Regional Conciliation Board cannot be referred to it afresh. The opinion as to the necessity or expediency for referring an industrial dispute for adjudication has to be formed by the State Government. It is impossible to contend that the necessity or expediency of making a reference of a particular industrial dispute must or will remain the same in all times, because at different times, different circumstances may exist. It is for the State Government to judge whether there has been change of circumstances ⁴¹. If the dispute is an industrial dispute, its factual existence and the expediency of making a reference in the circumstances of a particular case are matters entirely for the Government to decide upon and it will not be competent for the Court to hold the reference bad and quash the proceedings for want of jurisdiction merely because there was in its opinion no material before the Government on which it could have come to an affirmative conclusion on those matters ⁴².

Section—If retrospective—The provisions of clause (b) of the section cannot be given any retrospective effect. The language is such as to give a clear impression that the orders under it must be prospective so as to govern future terms and conditions of service ⁴³.

“3-A. Control of trade or business of a public utility service or a subsidiary undertaking.—[(1) Where the trade or business of any public utility service or any subsidiary undertaking has closed or is likely to be closed, the State Government, may, on the application of more than one-half of the total number of partners and owning between them more than fifty per cent. share therein, by order, published in the *Gazette*, authorize any person to carry on the trade or business, for the period, in the manner and to the extent provided in the order :

Provided that no such order shall be made unless the State Government is further satisfied that it is necessary for the maintenance of supplies and services essential to the life of the community or for maintaining employment :

Provided further that the State Government may, from time to time, by order, published in the *Gazette*, extend the period specified in the order aforesaid.

(2) While a person authorized under sub-section (1) is carrying on the trade or business of the service or undertaking—

(a) such person shall be entitled to the management of the affairs of the service or undertaking to the exclusion of any other person acting or purporting to act on behalf of the firm, and for the purposes of such management shall be entitled to employ such staff or other agency as he thinks fit ;

(b) the partners or any other person shall not have the right to control or take part in the carrying on of the trade or business ;

(c) such person shall be deemed to be acting as the agent of the service or undertaking and, subject only to such restrictions as the State Government may impose, shall have in relation to the management of the affairs of the service or undertaking all such powers and authority as the service or

40. *Lakshmi Devi Sugar Mills Ltd. v. U. P. Government*, 1954 A 705.

41. *Swadeshi Cotton Mills v. State Industrial Tribunal*, 1955 A 549 ; *Lakshmi Devi Sugar Mills Ltd. v. U. P.*

Government, 1954 A 705.

42. *British India Corporation Ltd. v. Government of U. P.* 1954 A 550.

43. *Basti Sugar Mills Co. Ltd. v. State of U. P.* 1954 A 538.

undertaking itself would have if its trade or business were not taken over under sub-section (1);

- (d) such person shall not, in respect of such matters relating to the said management as may be specified by order of the State Government, be bound by any obligation or limitation imposed on him as agent of the service or undertaking by or under any law, instrument or contract;
- (e) such person shall be entitled to retain out of the assets of the service or undertaking all costs, charges and expenses of, or incidental to, the said management and such remuneration as may be fixed by the State Government.

(3) No person authorized under sub-section (1) to carry on the trade or business of any service or undertaking shall be personally liable for acts done by him in good faith in the course of management of such trade or business.

(4) Upon the publication of the order under sub-section (1), the State Government shall, by order, direct the partners, directors, secretary, manager or any other person in charge of the management of the said service or undertaking to hand over the management of the trade or business of the said service or undertaking to the person mentioned in the said order.

(5) The Collector may, at the request of the person authorized under sub-section (1), deliver charge of the service or undertaking to the said person and may take or cause to be taken such steps and use or cause to be used such force as may be necessary for this purpose.

3-B. Person exercising control under Section 3 (f) to be deemed to be appointed under Section 3-A.—Where on the date immediately preceding the date of the commencement of the Uttar Pradesh Industrial Disputes (Amendment) Act, 1950, any person was, in pursuance of an order made under clause (f) of Section 3, exercising control over any public utility service or any subsidiary undertaking, he shall, notwithstanding anything in the said clause or Section 3-A, be deemed from the commencement of the said Act to have been a person validly authorised under and in accordance with Section 3-A and the order aforesaid shall have effect as if it were an order duly or validly passed under Section 3-A]⁴⁴

4. Specification of matters for adjudication.—An order made under Section 3, referring an industrial dispute for adjudication shall specify, as far as may be practicable, the matters upon which adjudication is necessary or desired :

Provided that—

- (i) the [State Government]⁴⁵ may of its own motion, or at the instance of a adjudicating authority, add to, amend or vary the matters so specified ;
- (ii) the [State Government]⁴⁵ may, with a view to specifying the said matter, direct the adjudicating authority to make a preliminary inquiry into the nature of the dispute, and postpone specification for such time as may reasonably be required.

44. Add. by S. 3 of U. P. Act XXV of 1950.

45. Subs. by A.O. 1950 for (Prov. Govt.)

Notification—Requirements.—When a dispute is referred all that is required is that the matters referred should be specified. This specification may be made either by giving the details in the order itself, or, by making some earlier notification which had already received adequate publicity, a part of the order referring the dispute. If the latter course is chosen, it has still to be held that the order referring the dispute does specify the matters for adjudication⁴⁶. If the notification mentions that the State Government was satisfied about the existence of the dispute, the High Court in a writ application cannot go into the question whether the satisfaction was right or wrong⁴⁷.

5. Power to include other undertakings in any adjudication.—

(1) Where an industrial dispute referred to adjudication under clause (d) of Section 3 has arisen only in a particular undertaking or group of undertakings, the [State Government]⁴⁸ may include in the adjudication proceedings any other undertaking either of its own motion or on an application received in this behalf, whether an industrial dispute exists at the time in that undertaking or not, provided that the [State Government]⁴⁸ is satisfied—

- (i) that the undertaking to be so included is engaged in the same type of industry or business as the undertaking or the group of undertakings in which the industrial dispute referred for adjudication has arisen ; and
- (ii) that the inclusion of the undertaking in the adjudication proceedings will not materially delay the award ; and
- (iii) that the issues involved in the industrial dispute referred for adjudication have already given rise, or are such as, in the circumstances, may reasonably be expected to give rise, to a similar dispute in the undertaking to be so included.

(2) When an undertaking has been included in adjudication proceedings under sub-section (1), the provisions of any order made under this Act shall, save as may be expressly provided to the contrary in any such order or award, apply to and in relation to such undertaking as they apply to and in relation to any undertaking or group of undertakings in which the industrial dispute referred for adjudication arose.

6. Awards and action to be taken on them.—(1) When an authority to which an industrial dispute has been referred for adjudication has completed its enquiry, it shall, within such time as may be specified, submit its award to the [State Government]⁴⁸.

(2) The [State Government]⁴⁸ may either enforce for such period as it may specify all or any of the decisions in the award ; or, either of its own motion or on application made to it, remit the award for reconsideration.

(3) The adjudicating authority shall, after reconsideration and within such period as may be specified by the [State Government]⁴⁸ submit its award ; the [State Government]⁴⁸ may then enforce for such period as it may specify all or any of the decisions in the award.

46. *Swadeshi Cotton Mills Co. Ltd. v. State Industrial Tribunal*, 1955 A 549.

47. *Newspapers Ltd. Allahabad v. State Industrial Tribunal*, 1954 A 516.

48. *Subs. by the A. O. 1950 for (Provl. Govt.)*

[⁴⁹6-A. Enlargement of time for submission of awards.—Where any period is specified or is required to be specified in any order made under or in pursuance of this Act referring any industrial dispute for adjudication within which the award shall be made, declared or submitted, it shall be competent for the State Government from time to time, to enlarge such period even though the period originally fixed or enlarged may have expired or the award made].

7. Power to continue order passed under other enactments.—Without prejudice to the generality of the powers vesting under Sections 3, 4 and 5 the [State Government]^{49a} may, by order, for the purposes contemplated in Section 3—

- (i) continue, with such modifications as it may consider necessary, under such conditions and for such period as may be specified in the order, any order which was previously passed under any other enactment in force, enforcing all or any of the decisions of an adjudicator or recommendations of a conciliator or any agreement reached in conciliation proceedings between the parties to an industrial dispute.
- (ii) enforce in the manner provided in Section 6, for such period as may be specified, the whole or any part of an agreement reached in conciliation proceedings between the parties to an industrial dispute.

8. Power to obtain information.—Without prejudice to any other provision contained in this Act, the [State Government]^{49a} or an officer authorised by it in this behalf may—

- (i) require by order any person to furnish or produce before any specified authority or person such information or article in his possession as may be specified in the order, being information or article which the [State Government]^{49a} or such officer considers it necessary or expedient to obtain or examine for the purposes of this Act ;
- (ii) authorise any person to enter or search any premises, or to inspect and seize any books or other documents or articles belonging to or under the control of any person which the

49. *Ins.* by U.P. Act XXIII of 1953.

For the removal of doubts as to validation of this section, the Section 3 of the Amending Act XXIII of 1953 is reproduced below :—

"3. Removal of doubts and validation.—For the removal of doubts it is hereby declared that :

(1) any order of enlargement referred to in Section 6-A made prior to the commencement of this Act, under the Principal Act, or any Order passed thereunder which would have been validly and properly made under the Principal Act, if Section 6-A had been part of the Act, shall be deemed to be and to have been validly and properly made thereunder ;

(2) no award whether delivered before or after the commencement of this Act, in any industrial dispute referred prior to the said commencement for adjudication under the Principal Act, shall be invalid on the ground merely that the period originally specified or any enlargement thereof had already expired at the date of the making, declaring or submitting of the award, and any action or proceeding taken, direction issued or jurisdiction exercised in pursuance of or upon such award be good and valid in law as if Section 6-A had been in force at all material dates ;

(3) every proceeding pending at the commencement of this Act before any court or tribunal against an award shall be decided as if the provisions of Section 6-A had been in force at all material dates."

49a. *Subs.* by the A. O. 1950 for [Provl. Govt.]

[State Government]⁵⁰ or the officer making the order may consider necessary for enforcing such order.

9. False statements.—If any person—

- (i) when required by order to make any statement or furnish any information, makes any statement or furnishes any information which he knows or has reasonable cause to believe to be false, or not true, in any material particular; or
- (ii) makes any such statement as aforesaid in any account, declaration, estimate, return or other document which he is required by order to furnish, he shall be punishable with imprisonment for a term which may extend to three years, or with fine or with both.

10. Power to require production of books, etc.—Where any person is required by order to make any statement or furnish any information to any authority, that authority may by order with a view to verifying the statement made or the information furnished by such person, further require him to produce any books, accounts or other documents relating thereto which may be in his possession or under his control.

11. Prohibition against disclosing information.—(1) No person who obtains any information by virtue of this Act, shall, otherwise than in connexion with the execution of the provisions of this Act or of any order made in pursuance thereof, disclose that information to any other person except with permission granted by or on behalf of the [State Government]⁵⁰.

(2) If any person contravenes the provisions of sub-section (1) he shall be punishable with imprisonment for a term which may extend to two years or with fine or with both.

12. Power under Industrial Disputes Act, 1947, to continue.—Unless any order made under this Act makes express provision to the contrary, nothing in this Act shall affect the power to refer any industrial dispute or matters connected therewith or report or settlement under the Industrial Disputes Act, 1947.

13. Arbitration Act, 1940 not to apply.—Nothing in the Arbitration Act, 1940, shall apply to any proceedings under any order made under this Act.

14. Penalty.—If any person contravenes any rule or order made under this Act, he shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

15. Offence to be deemed cognizable.—Notwithstanding anything contained in the Second Schedule to the Code of Criminal Procedure, 1898, any police officer may arrest without warrant any person who is reasonably suspected of having committed, or of committing, or of being about to commit a contravention of any rule or order made under this Act.

16. Cognizance of offence.—(1) No court shall take cognizance of any offence punishable under this Act except on a report in writing of

50. Subs. by the A. O. 1950 for [Provl. Govt.],

the facts constituting such offence made by the District Magistrate or by a public servant other than a District Magistrate with the previous sanction in writing of the District Magistrate.

(2) No court inferior to that of a magistrate of the first class shall try any offence punishable under this Act.

17. Effect of provision inconsistent with other enactments.—Any rule or order made or deemed to be made under this Act shall have effect notwithstanding anything inconsistent therewith contained in any other enactment or in any instrument having effect by virtue of any other enactment.

Scope.—The words of this section clearly show that it does not take away the jurisdiction which is vested in authorities under other laws to act in accordance with those laws. It only makes an order under the Industrial Disputes Act paramount so long as it remains in existence. But as soon as the order comes to an end, orders under other enactments come into force ⁵¹.

18. Attempt and abetment.—Any person who attempts to contravene or abets a contravention of any rule or order made or deemed to be made under this Act shall be deemed to have contravened that order.

19. Publication, affixation and defacement of notice.—(1) Save as otherwise expressly provided in an order made under this Act, every authority, officer or person who makes any order in writing in pursuance of this Act shall, in the case of an order of a general nature or affecting a class of persons, publish notice of such order in such manner as may in the opinion of such authority, officer or person, be best adapted for informing persons whom the order concerns and in the case of an order affecting an individual corporation or firm serve or cause the order to be served in the manner provided for the service of a summons in Order XXIX, Rule 2, or Order XXX, Rule 3, of the Code of Civil Procedure, 1908, as the case may be and in the case of an order affecting an individual person (not being a corporation or firm) serve or cause the order to be served on that person—

(i) personally by delivering or tendering to him the order ; or

(ii) by post ; or

(iii) where the person cannot be found, by leaving an authentic copy of the order with some adult male member of his family or by affixing such copy to some conspicuous part of the premises in which he is known to have last resided or carried on business or personally worked for gain.

(2) If in the course of any judicial proceedings, a question arises whether a person was duly informed of an order made in pursuance of this Act, compliance with sub-section (1) shall be conclusive proof that he was so informed ; but a failure to comply with sub-section (1)—

(i) shall not preclude proof by other means that he was so informed ; and

(ii) shall not affect the validity or the order.

(3) Any police officer and any other person authorised by the [State Government]⁵² in this behalf may, for any purpose connected with the purposes mentioned in Section 3 for the administration of this Act affix

51. *The General Secretary, Indian Press Allahabad Mazdoor Union v. The Manager, Indian Press Limited*, 1950

A W R 128.

52. *Subs. by the A. O. 1950 for [Provl Govt.]*

any notice to, or cause any notice to be displayed on any premises, vehicle or vessel and may, for the purpose of exercising the power conferred by this Act, enter any premises, vehicle, or vessel at any time.

(4) Any person authorised by the [State Government]⁵³ in this behalf may, for any purpose mentioned in sub-section (3) by order direct the owner or other person in possession or control of any premises, vehicle or vessel to display, any notice on, or in, the premises, vehicle or vessel in such manner as may be specified in the order.

(5) If any person without lawful authority removes, alters, defaces, obliterated or in any way tampers with any notice affixed, or displayed in pursuance of this Act, or contravenes any order under sub-section (4), he shall be punishable with imprisonment for a term which may extend to six months or with fine or with both.

20. Offence by a corporation.—If the person contravening a rule or order made or deemed to be made under this Act is a company or other body corporate, every director, manager, secretary, or other officer or agent thereof shall, unless he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention, be deemed to be guilty of such contravention.

21. Saving. (1) The provisions of Section 6 of the United Provinces General Clauses Act, 1904, shall apply upon the expiry or withdrawal of the United Provinces Industrial Disputes Ordinance, 1947, and the United Provinces Industrial Disputes (Second) Ordinance, 1947, as if they had then been repealed by a [Uttar Pradesh]⁵⁴ Act; and any order or appointment made or deemed to be made under the said Ordinances and in force immediately before the commencement of this Act shall continue in force and be deemed to be an order or appointment made under this Act.

(2) No order made in exercise of any power conferred by or under this Act or the said Ordinances shall be called in question in any court.

(3) When any order purports to have been made and signed by any authority in exercise of any power conferred by or under this Act or the said Ordinances, a court shall, within the meaning of Indian Evidence Act, 1872, presume that such order was so made by that authority.

22. Protection.—(1) No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made or deemed to be made thereunder.

(2) No suit or legal proceedings shall lie against the [Government]⁵⁵ for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made or deemed to be made thereunder.

23. Rule-making power.—The [State Government]⁵⁶ may make rules consistent with this Act for giving effect to the provisions of this Act.

53. Subs. by the A. O. 1950 for [United Provinces].

54. Subs. by *ibid* for [Crown].

55. Subs. by the A. O. 1950 for [Provl. Govt.]

THE INDUSTRIAL DISPUTES (UTTAR PRADESH AMENDMENT) ACT, 1951¹

(U.P. Act No. XXV of 1951)

CONTENTS

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| 1. Short title, extent and commencement. | 3. Validation of tribunals. |
| 2. Insertion of a new sub-section (3 A) after Section 7 of Act XIV of 1947. | 4. Validation of awards and proceedings. |

*Authoritative English text of the Industrial Disputes
(Uttar Pradesh Sanshodhan) Adhiniyam, 1951*

An Act

*to amend the Industrial Disputes Act, 1947, in its application
to Uttar Pradesh for certain purposes*

Whereas it is expedient to amend the Industrial Disputes Act, 1947, in its application to Uttar Pradesh, for the purposes hereinafter appearing :
It is hereby enacted as follows :—

1. Short title, extent and commencement.—(1) This Act may be called the Industrial Disputes (Uttar Pradesh Amendment) Act, 1951.

(2) It extends to the whole of Uttar Pradesh.

(3) It shall and be deemed to have come into force on and from the 26th day of June, 1951.

2. Insertion of a new sub-section (3-A) after Section 7 of Act XIV of 1947.—After sub-section (3) of Section 7 of the Industrial Disputes Act, 1947 (hereinafter referred to as the Principal Act), the following shall be added as a new sub-section (3-A)—

“(3-A) In relation to an industrial dispute other than that referred to in sub-clause (i) of clause (a) of Section 2 or in Section 4 of the Industrial Disputes (Banking and Insurance Companies) Act, 1949, the provisions of sub-section (3) shall have effect as if—

(a) after clause (c), the following new clauses (d) and (e) had been added—

“(d) is or has been a Magistrate of the first class for a period exceeding two years.”

“(e) is a person possessing more than two years’ practical experience of adjudicating or settling industrial disputes ;”

(b) in the proviso after the words ‘clause (b)’ the words ‘or clause (d) or clause (e)’ had been added.”

1. For S.O R see *Gaz. Extra.* d. Aug. 20, 1951.

For discussion see L. A. Pro. d. Aug. 23, 1951, in Vol. XCV, p. 243, d. Aug. 27, 1951, in Vol. XCVI, pp. 39-44, d. Mar. 7, 1952, in Vol. C, P.21 and L. C. Pro., d. Sep. 10, 1951, in Vol. XXIII pp. 205-207, d. March 7, 1952, in Vol. XXIV, p. 292.

Passed in Hindi by the Uttar Pradesh Legislative Assembly on August 27, 1951, and by the Uttar Pradesh Legislative Council on September 10, 1951.

Received the assent of the President on Oct. 3, 1951 under Article 201 of the Constitution of India and was published in the *Uttar Pradesh Gazette, Extra.* dated Oct. 19, 1951.

3. Validation of tribunals.—Every tribunal constituted or deemed to be constituted on or after 26th day of June, 1951 in the purported exercise of any power conferred by or under the Principal Act shall be deemed to have been constituted as if this Act was in force on the day on which it was so constituted.

4. Validation of awards and proceedings.—For the removal of doubts it is hereby declared that any award or decision made or any action or proceeding taken, direction issued or jurisdiction exercised by any tribunal in respect of any industrial dispute on or after the 26th day of June, 1951 shall be deemed to be as good and valid in law as if this Act were in force on all material dates.

THE UTTAR PRADESH INDUSTRIAL HOUSING ACT, 1955¹

(U. P. Act No. XXIII of 1955)

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(As passed by U. P. Legislature)

Whereas houses have been constructed and may hereafter be constructed by the State Government of Uttar Pradesh or local authorities for purposes of housing industrial workers ;

And whereas it is expedient to provide and set up an authority to administer and manage such houses ;

It is hereby enacted as follows :—

CHAPTER I

1. Short title, extent and commencement.—(1) This Act may be called the Uttar Pradesh Industrial Housing Act, 1955.

(2) It shall extend to the whole of Uttar Pradesh.

(3) It shall come into force in such areas and with effect from such date as the State Government may by notification in the official *Gazette* declare in this behalf.

The Act received the assent of the President on Dec. 19, 1955 and was published in U. P. Gaz. Extra. dated Dec. 21, 1955.

2. Definitions.—In this Act, unless there is anything repugnant in the subject or context,—

- (a) "Advisory Committee" means the Advisory Committee constituted under Section 8 ;
- (b) "allotment" means the grant by or on behalf of the State Government or a local authority of a right of use and occupation of any house to any person but does not include a grant by way of a lease ;
- (c) "house" means a house referred to in sub-section (1) of Section 3 and includes any part thereof, and—
 - (i) any garden, grounds and out-houses appertaining to such house,
 - (ii) any furniture supplied by the State Government, the local authority or the Housing Commissioner, for use in such house,
 - (iii) any fitting affixed to such house for more beneficial enjoyment thereof ;
- (d) "Housing Commissioner", "Deputy Housing Commissioner", "Assistant Housing Commissioner", mean the officers appointed as such by the State Government ;
- (e) "industrial worker" means a worker as defined in the Factories Act, 1948 ;
- (f) "prescribed" means, prescribed by rules made under this Act ;
- (g) "rent" means the amount payable by an allottee or any person for use and occupation of a house ; and
- (h) "State Government" means the Government of Uttar Pradesh.

3. Application of the Act.—(1) This Act shall apply to houses constructed by the State Government or any local authority for the occupation of industrial workers under the Industrial Housing Scheme subsidized by the Central Government (hereinafter called the Subsidized Industrial Housing Scheme) or under any other scheme of the State or Central Government to be notified in the *Gazette* in that behalf.

(2) The State Government may, by a declaration published in the official *Gazette*, specify from time to time such houses with the names of the town where situate and the declaration shall be conclusive evidence that the houses were constructed by the State Government or local authority, as the case may be, for occupation by industrial workers under the Subsidized Industrial Housing Scheme.

4. Housing Commissioner.—(1) The State Government shall by notification in the official *Gazette* appoint a Housing Commissioner.

(2) The Housing Commissioner shall be a Corporation sole by the name of the Housing Commissioner, Uttar Pradesh, and shall have perpetual succession and an official seal and may sue and be sued in his corporate name.

5. Deputy Housing Commissioner, Assistant Housing Commissioner.—(1) The State Government may appoint one or more

Deputy Housing Commissioners and Assistant Housing Commissioners and other officers and staff as it may consider necessary to administer, supervise and carry out the work connected with the administration of this Act.

(2) A Deputy Housing Commissioner and an Assistant Housing Commissioner shall, subject to general control of the State Government and the orders of the Housing Commissioner, be competent to discharge any of the duties and to exercise any of the powers of the Housing Commissioner, and when discharging such duties or exercising such powers, shall have the same privileges and be subject to the same liabilities as the Housing Commissioner.

6. Housing Commissioner and other officers, and servants to be public servants under Section 121, Indian Penal Code.—The Housing Commissioner and any other officer or servant appointed under sub-section (1) of Section 5 shall be deemed to be public servants within the meaning of Section 121 of the Indian Penal Code.

7. Duties of the Housing Commissioner.—Subject to the control of the State Government, the Housing Commissioner shall be responsible for allotment of houses, realization of their rent, eviction of persons occupying such houses, and all other matters relating to the administration of this Act.

8. Advisory Committee.—(1) The State Government may by notification in the official *Gazette*, constitute an Advisory Committee to advise on matters relating to the administration of this Act which the State Government or the Housing Commissioner may refer to it for advice.

(2) The members of the Advisory Committee shall be appointed by the State Government. Their number including the Chairman shall be nine :

Provided that the Advisory Committee shall include at least one member representing industrial workers and one representing employers of such industrial workers.

(3) The Chairman of the Advisory Committee shall be appointed by the State Government.

9. Person deemed to be in unauthorized occupation.—For the purposes of this Act a person shall, save as otherwise provided in this Act, be deemed to be in unauthorized occupation of any house—

- (a) where he has entered into possession of a house otherwise than under and in pursuance of any allotment made by the Housing Commissioner ; and
- (b) where being an allottee he has by reason of cancellation of an allotment under sub-section (2) of Section 12 ceased to be entitled to occupy the house ;
- (c) has ceased to be an industrial worker defined under the Act.

Explanation.—A person shall not merely by reason of the fact that he has paid any amount as rent be deemed to have entered into possession of the house as allottee.

10. Application for allotment.—An application for allotment of houses shall be made in such form as may be prescribed,

11. Allotment of houses.—The allotment of houses shall be made by the Housing Commissioner in such manner as may be prescribed.

12. Conditions of occupation.—(1) The occupation by any person of a house shall at all times, be subject to conditions relating to the occupation of such house as may be prescribed, or as may be intimated from time to time by the Housing Commissioner.

(2) Notwithstanding anything contained in any law for the time being in force, the Housing Commissioner may, after notice to the occupier and considering his explanation, if any, for reasons to be recorded, cancel any allotment under which a house is held or occupied by any person. A copy of the order cancelling the allotment shall be served upon such person.

13. Jurisdiction of Courts barred.—No order made by the State Government or Housing Commissioner in the exercise of any power conferred by or under this Act shall be called in question in any court, and no injunction shall be granted by any court or any authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

14. Execution of agreement.—Every occupier of a house shall execute an agreement in such form as may be prescribed.

15. Rates of rent and dates of payment.—There shall be payable by every person in whose favour an allotment is made, rent and other charges at such rates and on such dates as may be fixed by the Housing Commissioner.

16. Mode of payment of rent and other charges.—All rents and other charges shall be collected in cash and shall be payable monthly by the 15th day of the following month :

Provided that the Housing Commissioner may, subject to such directions as may be issued by the State Government, extend from time to time the period of payment of the rent and the other charges.

17. Arrears of rent and other charges.—Any rent or other charges not paid on the due date, or within such extended period as may be given by the Housing Commissioner, shall be treated as an arrear.

18. Power to enter into any house.—The Housing Commissioner, the Deputy Housing Commissioner, the Assistant Housing Commissioner, or any other officer appointed under this Act may with such assistants, if any, as he thinks fit, enter at all reasonable hours into any house which he considers it necessary to enter for the purpose of administering or carrying out the provisions of this Act.

19. Recovery of arrears of rent, etc.—If arrears of rent or other charges for which notice of demand has been served are not paid to the Housing Commissioner, or to such other officer authorized by him, within 30 days from the date of service or such extended period as he may allow, such arrears with all costs of recovery shall be recoverable as arrears of land revenue, and the person liable to pay the same shall be deemed to be in unauthorized occupation of the house concerned.

20. Deduction of rent from salary or wages.—(1) Without prejudice to the provisions of any other Act, any person may execute an agreement in favour of the Housing Commissioner, providing that the employer under whom he is employed, shall be competent to deduct from the salary or wages payable to him such amount as may be specified in the agreement and to pay the amount so deducted to the Housing Commissioner in satisfaction of the rent and other charges due to him in respect of the premises allotted.

Upon the execution of such agreement the employer shall, notwithstanding anything contained in the Payment of Wages Act, 1936, make, if so required by the Housing Commissioner, in writing, deduction of the amount specified in the requisition from the salary or wages of the employee and pay the amount so deducted to the Housing Commissioner or such other official as may be authorized by him, and the employer shall be liable for any amount paid in contravention of this requisition.

(2) If the employer fails to pay to the Housing Commissioner the amount deducted under sub-section (1) within 30 days from the date of service of a notice in that behalf, or pays any amount to the employee in contravention of the requisition under the said sub-section, the amount deducted or which he so pays with all costs of recovery shall be recoverable as arrears of land revenue.

21. Eviction from the premises.—(1) If the Housing Commissioner is satisfied that—

(a) the person authorized to occupy any house —

(i) is in arrears of rent or other charges lawfully due from him in respect of such house for a period of two months, unless the period for payment of rent has been extended by the Housing Commissioner under Section 16, or

(ii) has sub-let, the whole or any part of such house, or

(iii) has otherwise acted in contravention of any of the terms, express or implied, under which he is authorized to occupy such premises, or

(iv) has ceased to be an industrial worker as defined under the Act, or

(a) any person is in unauthorized occupation of any premises, the Housing Commissioner may, notwithstanding anything contained in any law for the time being in force, by notice served—

(i) by post, or

(ii) by affixing a copy of it on the outer door or some other conspicuous part of such house, or

(iii) in such other manner as may be prescribed,

order that such person, as well as any other person who may be in occupation of the whole or any part of the house, to vacate it within one month of the date of the service of the notice.

(2) If any person refuses, or fails to comply with an order made under sub-section (1) the Housing Commissioner may order eviction of that person from, and take possession of, the house; and may for that purpose authorize the use of such force as may be necessary. A copy of the order shall also be served upon the person,

(3) If a person who has been ordered to vacate any house under sub-clause (i) or (iii) of clause (a) of sub-section (1) pays, within one month of the date of service of the notice or such longer time as the Housing Commissioner may allow, to the Housing Commissioner the rent or other charges in arrears or carries out or otherwise complies with the terms contravened by him, to the satisfaction of the Housing Commissioner, he may, instead of evicting such person cancel his order under sub-section (1) and thereupon such person shall hold the house on the same terms as those on which he held it immediately before such notice was served and on such other terms and conditions which may be laid down by the Housing Commissioner.

22. Right of appeal—(1) Any person aggrieved by an order of the Housing Commissioner under sub-section (2) of Section 12 or sub-section (2) of Section 21 may, within 15 days of the service of the order under the said sections, prefer an appeal to the State Government :

Provided that the State Government may entertain the appeal after the expiry of the said period of 15 days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) On receipt of an appeal under sub-section (1) the State Government may, after calling for a report from the Housing Commissioner, and after making such further enquiries, if any, as may be necessary, pass such orders as it thinks fit and the order of the State Government shall be final.

(3) Where an appeal is preferred under sub-section (1), the State Government may stay the enforcement of the order appealed against for such period and on such conditions as it thinks fit.

23 Powers to recover damages.—(1) Where any person is in unauthorized occupation of any house, the Housing Commissioner, may in the prescribed manner, assess such damages on account of the use or occupation of the house as he may deem just and proper and may, by notice served by post or otherwise, order that person to pay the damages within such time as may be specified in the notice.

(2) If any person refuses or fails to pay the damages within the time specified in the notice, the damages may be recovered as arrears of land revenue.

(3) Nothing in sub-section (1) or (2) shall be construed to debar the person ordered to pay damages from contesting his liabilities by a suit in the court having jurisdiction :

Provided that before any such suit is instituted he shall deposit with the Housing Commissioner the amount specified in the notice under sub-section (1), if the amount has not already been realized under sub-section (2), and it shall be kept subject to the orders of the court.

24. Realization of moneys payable under the Act.—(1) All moneys payable under this Act may be realized as arrears of land revenue.

(2) All moneys realized under this Act shall be deposited to the credit of the State Government either in the State Treasury or in the Imperial Bank as may be prescribed.

25. Cognizance of offences.—Unless otherwise expressly provided no court shall take cognizance of any offence punishable under

this Act except on the complaint, or information, received from the Housing Commissioner or such official as may be authorized by him in this behalf.

26. Protection of action taken under this Act.—No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or purported to be done under this Act.

27. Punishment.—(1) Whoever contravenes any provision of this Act and/or the rules made thereunder shall on conviction be punished with imprisonment for a term which may extend to three months or with fine which may extend to five hundred rupees or with both.

(2) Any person who obstructs the lawful exercise of any power conferred by or under this Act, shall on conviction be punished with imprisonment for a term which may extend to three months or with fine which may extend to five hundred rupees or with both.

28. Power to make rules.—(1) The State Government may, subject to the conditions of previous publication, make rules for carrying out the purpose of this Act.

(2) Without prejudice to the generality of the foregoing powers, such rules may provide for—

- (i) the duties and functions of the Housing Commissioner ;
- (ii) the constitution and membership of the Advisory Committee under Section 8 ;
- (iii) the form of application and manner of allotment of accommodation and conditions relating to its occupation ;
- (iv) the form and manner in which an appeal under Section 22 shall be preferred ;
- (v) the fees, if any, to be paid in appeals under Section 22 ;
- (vi) the form of agreement referred to in Sections 14 and 20 ;
- (vii) the mode of service of the order under sub-section (2) of Section 12 or sub-section (2) of Section 21 ;
- (viii) the mode of payment of rent and other charges ;
- (ix) assessment of damages referred to in Section 23 ;
- (x) the maintenance and upkeep of the houses ; and
- (xi) the matters which are to be or may be prescribed.

THE INTERMEDIATE EDUCATION ACT, 1921 ¹

(U. P. Act No. II of 1921)

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Sections

2. Definitions.
3. Constitution of the Board.

July, 1921, published in Vol. II, p. 635, Vol. II, pp. 676—706, Vol. III, p. 54, Vol. III, pp. 111—160 and Vol. III, pp. 179—243, respectively.

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| 9. Powers of State Government. | 18. Casual vacancies. |
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| 11. Powers and duties of Chairman. | 20. Power of Board and Committees to make by-laws. |
| 12. Appointment, powers and duties of Secretary. | |
| 13. Appointment and constitution of | |

Amended by the U. P. Act No. V of 1941².

Amended by the U. P. Act No. IV of 1950³.

Adapted and modified by the Government of India² (Adaptation of Indian Laws) Order, 1937.

Adapted and modified by the Adaptation of Laws Order, 1950.

(Received the assent of the Governor on the 30th September, 1921, and of the Governor-General on the 10th December, 1921, and was published⁴ under Section 81 of the Government of India Act on the 7th January, 1922.)

An Act

for the establishment of a Board of High School and Intermediate Education.

Whereas it is expedient to establish a Board to take the place of the Allahabad University in regulating and supervising the system of High School and Intermediate Education in the United Provinces, and to prescribe courses [therefor];⁵

It is hereby enacted as follows :

1. Short title, extent and commencement.—(1) This Act may be called the Intermediate Education Act, 1921.

2. This Act was prepared by the Governor in exercise of the powers assumed by him under the Proclamation, d. Nov. 3, 1939, issued under S. 93 of the G. of I. Act, 1935, and was published with S. O. R. in Gaz. 1941, Pt. VII-A, p. 7. Re-enacted and continued by S. 3 and Sch. of U. P. Act XIII of 1948.
3. For S. O. R. see Gaz., d. Jan. 21, 1950. For discussion, see L. A. Pro. d. Mar. 1, 1950, in Vol LXVI, pp. 149—150, d. April 14, 1950 in Vol. LXXI, p. 113 and L. C. Pro., d. Feb. 3 and 10, 1950 in Vol. XIV, pp. 27, 246—47, d. April 20, 1950 in Vol. XV, p. 481. The United Provinces Intermediate Education (Amendment) Ordinance,

1949, rep. by S. 3 of this Act (U. P. Act IV of 1950).

Passed in Hindi by the Uttar Pradesh Legislative Assembly on March 1, 1950, and by the Uttar Pradesh Legislative Council on February 10, 1950.

Received the assent of the Governor on March 14, 1950, under Article 200 of the Constitution of India, and was published in the *Uttar Pradesh Gazette Extraordinary*, dated March 16, 1950.

4. See Gaz. 1922, Pt. VII, p. 1.
5. Subs. for "for English Middle classes, subject to the control of the L. G." by S. 2 of U. P. Act V of 1941 made by the Governor in exercise of the powers assumed by him under S. 93 of the G. of I. Act, 1935.

(2) [It shall extend¹ to the whole of Uttar Pradesh.]²

(3) It shall come into force on such date³ as the [State Government]⁴ may, by notification in the [Official Gazette]⁵ direct.

2. Definition.—In this Act, and in all Regulations made hereunder, unless there is anything repugnant in the subject or context,—

(a) “Board” means the Board of High School and Intermediate Education ;

(b) “Institution” means the whole of an institution, or a part thereof, as the case may be ;

(c) * * *

(d) “Recognition” means recognition for the purpose of preparing candidates for admission to the Board’s examinations ;

(e) “Regulations” means Regulations made by the Board under this Act.

3. Constitution of the Board.—(1) The Board shall be established as soon as may be after this Act has come into force, and shall consist of—

(a) the Director of Public Instruction (*ex officio* Chairman) ;

(b) two Principals of Intermediate colleges maintained by [the State Government]⁷ appointed by the [State Government]⁸ ;

1. This Act has been extended to the areas mentioned in column 1 of this table under the Act or Order mentioned in column 2 and enforced in		such areas under notification, if any, mentioned in column 3 with effect from the date mentioned in column 4 against each such area :	
Areas	Act or Order under which extended	Notification, if any, under which enforced.	Date from which enforced
1	2	3	4
1. Rampur District.	Rampur (Application of Laws) Act, 1950.	No. 810/XVII, d. Feb. 28, 1950.	March 1, 1950.
2. Banaras District.	Banaras (Application of Laws) Order, 1949.	No. 812/XVII, d. Feb. 28, 1950.	Ditto.
3. Tehri-Garhwal District.	Tehri-Garhwal (Application of Laws) Order, 1950.	No. 811/XVII, d. Feb. 28, 1950.	Ditto.

2. Subs. for sub-s. (2) of S. 1 by the A. O. 1950.

3. The Act came into force on April 1, 1922 ; see not. no. 726/XV, d. Mar. 7, 1922, in *Gaz.* 1922, Pt. I, p. 323.

4. Subs. by the A. O. 1950 for [Provl. Govt.] which had been subs. by the A. O. 1937 for [L. G.].

5. Subs. for [Gazette] by the A. O. 1937.

6. The following cl. (c) was *del.* by S. 3 of U. P. Act V of 1941 made by the Governor in exercise of the powers assumed by him under S. 93 of the

G. of I. Act, 1935—

“(c) ‘Minister’ means Minister for Education in the United Provinces”.

7. Subs. by the A. O. 1950 for [the Provl. Govt.] which had been subs. by the A. O. 1937 for [Govt.].

8. Subs. for [Provincial Govt.] by the A. O. 1950 which had been subs. for [Minister] by S. 4 of U. P. Act V of 1941 made by the Governor in exercise of the powers assumed by him under S. 93 of the G. of I. Act, 1935 as continued by U. P. Act XIII of 1948.

- (c) four Principals of Intermediate colleges not maintained by [the State Government]¹ elected from among themselves²;
- (d) one headmaster of a High School maintained by [the State Government]¹, appointed by the State Government³;
- (e) two headmasters of High Schools not maintained by [the State Government]¹ elected from among themselves²;
- (f) a representative of Engineering, appointed by the [State Government]³;
- (g) a representative of Agriculture, appointed by the [State Government]³;
- (h) a member of the Medical profession, appointed by the Uttar Pradesh Medical Council;
- (i) a member of the staff of a Training College for teachers, appointed by the [State Government]³;
- (j) a representative of Industries, appointed by the [State Government]³;
- (k) a lady appointed by the [State Government]⁴ to represent women's education;
- (l) representatives elected by Universities established by law in [Uttar Pradesh]⁵, whose number shall be, as nearly as possible, one-third of the total number of the other members of the Board;

Explanation.—The number of representatives to be assigned to each University under clause (l) of sub-section (1) shall be fixed by the [State Government]¹;

- (m) [two members elected by the members of the Legislative Assembly, and one member by the members of the Legislative Council]⁶;
- (n) one member each appointed by the Upper India Chamber of Commerce and [Uttar Pradesh]⁶ Chamber of Commerce;
- (o) one member each appointed by the British Indian Association and by the Agra Landholders' Association.

(2) Persons not more than three in number may be nominated by the [State Government]⁸ to secure the representation of minorities not otherwise adequately represented.

(3) The Board shall be authorized to co-opt persons not exceeding three in number, on account of their possessing expert knowledge in subjects of study included in the courses prescribed by the Board.

1. Subs. by the A. O. 1950 for [the Provl. Govt.] which had been subs. by the A. O. 1937 for [Govt.]
 2. For regulation for election of members, see not. no. 209-E.N./XV, dated July 11, 1922, in Gaz. 1922, Pt. IV, p. 691.
 3. Subs. for [Provincial Government] by the A. O. 1950 which has been subs. for [Minister] by s. 4 of U. P. Act V of 1941 made by the Governor

in exercise of powers assumed by him under S. 93 of the G. of I Act, 1935 as continued by U. P. Act XIII of 1948.
 Subs. for [the United Provinces] by the A. O. 1950.
 Subs. for "three members elected by the non-official members of the Legislative Council" by the A. O. 1937.

4. Term of office of members.—(1) Members other than *ex officio* and co-opted members shall hold office for a term of three years from the date of the notification published under Section 6.

[Provided that the State Government may, by notification in the official *Gazette*, enlarge the term of office of all such members by a period not exceeding one year at a time, so however that the enlargements so granted shall not in the aggregate exceed two years]¹.

(2) The term of office of co-opted members shall terminate on the same date as that of other appointed members.

5. Filling of vacancies on expiry of term of office.—When the prescribed term of office of members other than *ex officio* members has expired, the vacancies so caused shall be filled as soon as conveniently may be in accordance with sub-section (1) of Section 3.

6. Publication of names.—The names of the persons who have been nominated or elected to be members of the Board, in accordance with sub-sections (1) and (2) of Section 3 or with Section 5, shall be published by notification in the [official *Gazette*]².

7. Powers of the Board.—Subject to the provisions of this Act the Board shall have the following powers, namely:

(1) to prescribe courses of instruction for the Intermediate classes and the High * * *³ sections of English schools in such branches of education as it may think fit;

(2) to grant diplomas or certificates to persons who—

(a) have pursued a course of study in an institution admitted to the privileges of recognition by the Board, or

(b) are teachers, or

(c) have studied privately, under conditions laid down in the Regulations, and have passed the examinations of the Board under like conditions;

(3) to conduct examinations at the end of the High School and Intermediate courses;

(4) to recognize institutions for the purposes of its examinations;

(5) to admit candidates to its examinations;

(6) to demand and receive such fees as may be prescribed in the Regulations;

(7) to publish the results of its examinations;

(8) to co-operate with other authorities in such manner and for such purposes as the Board may determine;

(9) to call for reports from the Department of Public Instruction on the condition of recognized institutions or of institutions applying for recognition;

1. *Add.* by s. 2 of U. P. Act IV of 1950.

2. *Subs.* for [*Gazette*] by the A. O. 1937.

3. The words "and Middle" *del.* by S.

5 (1) of U. P. Act V of 1941 made by the Governor in exercise of the powers assumed by him under S. 93 of the G. of I. Act. 1935.

(10) to submit to the [State Government]¹ its views on any matter with which it is concerned ;

(11) to see the schedules of new demands proposed to be included in the budget relating to institutions recognized by it and to submit, if it thinks fit, its views thereon for the consideration of the [State Government]² ;

(12) to do all such other acts and things as may be requisite in order to further the objects of the Board as a body constituted for regulating and supervising High School and Intermediate Education.

8. Exemption of certain Universities from the operation of the Act.—Nothing in the Act shall affect the constitution, powers or functions of the Banaras Hindu University, the Aligarh Muslim University or the Lucknow University except with their consent recorded in writing.

9. Powers of State Government.—(1) The [State Government]³ shall have the right to address the Board with reference to any of the works conducted or done by the Board and to communicate to the Board his³ views on any matter with which the Board is concerned.

(2) The Board shall report to the [State Government]³ such action, if any, as it is proposed to take or has been taken upon his³ communication.

(3) If the Board does not, within a reasonable time, take action to the satisfaction of the of the [State Government]² the [State Government]³ may, after considering any explanation furnished or representation made by the Board, issue such directions consistent with this Act as he³ may think fit, and the Board shall comply with such directions.

(4) In any emergency which, in the opinion of the [State Government]³ requires that immediate action should be taken, the [State Government]³ may take such action consistent with this Act as he⁴ deems necessary without previous consultation with the Board, and shall forthwith inform the Board thereof.

10. Officers of the Board.—The following shall be the officers of the Board :

(1) The Chairman.

(2) The Secretary.

(3) Such other officers as may be declared by the Regulations to be officers of the Board.

11. Powers and duties of Chairman.—(1) It shall be the duty of the Chairman to see that this Act and the Regulations are faithfully observed and he shall have all powers necessary for this purpose.

1. *Subs.* for [Provincial Govt.] by the A. O. 1950 which had been *subs.* for [Minister] by S. 5 (2) of U. P. Act V of 1941 made by the Governor, in exercise of the powers assumed by him under S. 93 of the G. of I. Act, 1935 as continued by U. P. Act XIII of 1948.

2. *Subs.* for [Provincial Govt.] by the

A. O. 1950 which had been *subs.* for [Minister] by S. 6 of U. P. Act V of 1941 made by the Governor in exercise of the powers assumed by him under S. 93 of the G. of I. Act, 1935 as continued by U. P. Act XIII of 1948.

3. *Sic* "Its".

4. *Sic* "It".

(2) The Chairman shall have power to convene meetings of the Board and shall call a meeting, at any time after due notice, on a requisition signed by not less than five members of the Board and stating the business to be brought before the meeting.

(3) In any emergency, arising out of the administrative business of the Board, which, in the opinion of the Chairman, requires that immediate action should be taken, the Chairman shall take such action as he deems necessary, and shall thereafter report his action to the Board at its next meeting.

(4) The Chairman shall exercise such other powers as may be prescribed by the Regulations.

12. Appointment, powers and duties of Secretary.—(1) The Secretary shall be appointed by the [State Government]¹ upon such conditions and for such period as the [State Government]¹ may deem fit.

He shall be removable from office by the votes of not less than three-fourths of the members present at a special meeting of the Board at which not less than one-half of the total number of the members are present.

(2) The Secretary shall, subject to the control of the Board, be the administrative officer of the Board. He shall be responsible for the presentation of the annual estimates and statement of accounts.

(3) He shall be responsible for seeing that all moneys are expended on the purpose for which they are granted or allotted.

(4) He shall be responsible for keeping the minutes of the Board.

(5) He shall exercise such other power as may be prescribed by the Regulations.

(6) He shall be entitled to be present and to speak at any meeting of the Board, but shall not be entitled to vote thereat.

13. Appointment and constitution of Committees.—(1) The Board shall appoint Committees of Courses, an Examinations' Committee, a Committee for Recognition, a Finance Committee, and such other Committees, if any, as may be prescribed by the Regulations.

(2) Such Committees shall consist of members of the Board and of such other persons, if any, as the Board in each case may think fit.

(3) A Committee may co-opt persons to serve thereon up to a limit of one-third of the total number of members of the Committee.

(4) Members of Committees, other than co-opted members, shall hold office for a period of three years.

The term of office of co-opted members shall be one year :

Provided that the term of office of members of a Committee, whether they are members of the Board or not, shall not extend beyond that of appointed members of the Board.

14. Exercise of powers delegated by Board to Committees.—All matters relating to the exercise by the Board of powers con-

1. Subs. for [Provincial Govt.] by the A. O. 1950 which had been subs. for [Minister] by S. 6 of U. P. Act V of 1941 made by the Governor in exer-

cise of the powers assumed by him under S. 93 of the G. of I. Act, 1935 as continued by U. P. Act XIII of 1948.

ferred upon it by this Act which have by Regulation been delegated by the Board to any one of its Committees shall stand referred to that Committee, and the Board before exercising any such powers shall receive and consider the report of the Committee with respect to the matter in question.

Regulations

15. Power of Board to make Regulations.—(1) The Board may make Regulations for the purpose of carrying into effect the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power the Board may make Regulations providing for all or any of the following matters, namely—

- (a) the constitution, powers and duties of Committees ;
- (b) the conferment of diplomas and certificates ;
- (c) the conditions of recognition of institutions for the purposes of its examinations ;
- (d) the courses of study to be laid down for all certificates and diplomas ;
- (e) the conditions under which candidates shall be admitted to the examinations of the Board and shall be eligible for diplomas and certificates ;
- (f) the fees for admission to the examinations of the Board ;
- (g) the conduct of examinations ;
- (h) the appointment of examiners and their duties and powers in relation to the Board's examinations ;
- (i) the election of members to the Board under clauses (c) and (e) of sub-section (1) of Section 3 ;
- (j) the admission of institutions to the privileges of recognition and the withdrawal of recognition ;
- (k) all matters which by this Act are to be or may be provided for by Regulations ;
- (l) the conditions under which grants-in-aid shall be given to institutions recognized by the Board.

16. Previous publication and sanction of Regulations made by Board.—Regulations¹ under Section 15 shall not be made

1. For Regulations, see notes. no. 373/XV—1008-1921, d. Feb. 3, 1923 ; d. Feb. 10, 1923 ; no. B-2880/V—5, d. Feb. 26, 1924 ; no. B-3613/V—5, d. Jan. 15, 1925 ; no. B-1011/V—5, d. July 13, 1925 ; no. B-3029/V—18, d. Nov. 28, 1925 ; no. B-3479/V—18, d. Jan. 4, 1926 ; no. B-1860/V—18, d. Sep. 14, 1926 ; no. B-2806/V—18, d. Nov. 22, 1926 ; no. B-61/V—18, d. April 11, 1927 ; no. B-5086/V—18, d. Feb. 8, 1928 ; no. B-328/V—18, d. May 7, 1928 ; no. B-4119/V—18, d. Jan. 5, 1929 ; no. B-4222/V—18, d. Jan. 28, 1929 ; no. B-153/V—18, d. April 25, 1929 ; no. B-6783/V—18(1) d. Mar. 8, 1930 ; no. B-6903/V—18

(1), d. Mar. 19, 1930 ; no. B-175/V—18 (1), d. April 16, 1930 ; no. B-4081/V—18(1), d. Dec. 22, 1930 ; no. B-4740/V—18(1), d. Mar. 16, 1931 ; no. B-3353/V—2, d. Dec. 11, 1931 ; no. B-948/V—2, d. May 10, 1932 ; no. B-5111/V—2, d. Dec. 6, 1932 ; no. B-6171/V—2, d. Mar. 2, 1933 ; no. B-4206/V—2, d. Dec. 11, 1933 ; no. B-5580/V—2, d. Mar. 15, 1934 ; no. B-6337/V—1, d. Feb. 27, 1935 ; no. B-6787/V—1, d. Mar. 27, 1935 ; no. B-7611/V—1, d. Dec. 23, 1935 ; no. B-8136/V—1, d. Jan. 13, 1936 ; no. B-8974/V—1, d. Mar. 11, 1936 ; no. B-8997/V—1, d. Mar. 16, 1936 ; no. B-8855/V—1, d. Jan. 18,

except after publication and shall not take effect until they have been sanctioned by the [State Government]² and published in the [Official Gazette]³

17. * * *

18. Casual vacancies.—All casual vacancies among the members (other than *ex officio* members) of the Board or of a Committee appointed by the Board shall be filled as soon as conveniently may be by the person or body who appointed, elected or co-opted the member whose place has become vacant, and the person appointed, elected or co-opted to a casual vacancy shall be a member of the Board or Committee for the residue of the term for which the person whose place he fills would have been a member.

19. Proceedings not invalidated by reason of vacancies.—No act or proceeding of the Board or of a Committee appointed by it shall be invalidated merely by reason of the existence of a vacancy or vacancies among its members.

1937; no. B-9314/V—1, d. Feb. 16, 1937; no. B-10176/V—1, d. Mar. 16, 1937; no. B-58/V—4, d. April 2, 1938; no. B-7063/V—4, d. Jan. 11, 1939; no. B-7123/V—4, d. Jan. 16, 1939; no. B-7532/V—4, d. Feb. 16, 1939; no. B-7810/V—4, d. Feb. 24, 1939; and no. B-933/V—4, d. June 3, 1939; published in *Gaz.*, 1923, Pt. VIII, p. 71, *ibid*, 1923, Pt. IV, p. 126, *ibid*, 1924, Pt. IV, p. 1097, *ibid*, 1925, Pt. IV, p. 99, *ibid*, 1925, Pt. IV, p. 1159, *ibid*, 1925, Pt. IV, p. 1302, *ibid*, 1926, Pt. IV, p. 2, *ibid*, 1926, Pt. IV, p. 894, *ibid*, 1926, Pt. IV, p. 964, *ibid*, 1927, Pt. IV, p. 125, *ibid*, 1928, Pt. IV, p. 67, *ibid*, 1928, Pt. IV, p. 167, *ibid*, 1929, Pt. IV, p. 5, *ibid*, 1929, Pt. IV, p. 13, *ibid*, 1929, Pt. IV, p. 112, *ibid*, 1930, Pt. IV, p. 47, *ibid*, 1930, Pt. IV, p. 49, *ibid*, 1930, Pt. IV, p. 117, *ibid*, 1931, Pt. IV, p. 3, *ibid*, 1931, Pt. IV, p. 97, *ibid*, 1931, Pt. IV, p. 1212, *ibid*, 1932, Pt. IV, p. 145, *ibid*, 1932, Pt. IV, p. 893, *ibid*, 1933, Pt. IV, p. 39, *ibid*, 1933, Pt. IV, p. 1007, *ibid*, 1934, Pt. IV, p. 95, *ibid*, 1935, Pt. IV, p. 38, *ibid*, 1935, Pt. IV, p. 104, *ibid*, 1935, Pt. IV, p. 1155, *ibid*, 1936, Pt. IV, p. 14, *ibid*, 1936, Pt. IV, p. 58, *ibid*, 1936, Pt. IV, p. 63, *ibid*, 1937, Pt. IV, p. 20, *ibid*, 1937, Pt. IV, p. 39, *ibid*, 1937, Pt. IV, p. 51, *ibid*, 1938, Pt. IV, p. 106, *ibid*, 1939, Pt. IV, p. 4, *ibid*, 1939, Pt. IV, p. 5, *ibid*, 1939, Pt. IV, p. 33, *ibid*, 1939, Pt. IV, p. 36 and *ibid*, 1939, Pt. IV, p. 612, respectively. See also Calendar of the Board published for the year 1951-52.

2. Subs. for [Provincial Govt.] by the A. O. 1950 which had been subs for [Minister] by s. 6 of U. P. Act V of 1941, made by the Governor in

exercise of the powers assumed by him under S. 93 of the G. of I. Act, 1935 as continued by U. P. Act XIII of 1948.

3. Subs. for [Gazette] by the A. O. 1937.

4. S. 17 re duty of Board to submit Regulations and power of Minister to make Regulations in default of Board omit. by S. 7 of U. P. Act V of 1941, made by the Governor in exercise of the powers assumed by him under S. 93 of the G. of I. Act, 1935. The S. as adapted by the A. O. 1937 is reproduced below:

(1) Within six months from the commencement of this Act or within such further period as the [State Government] may fix in the behalf—

- (a) the Board as constituted under this Act shall prepare a body of Regulations for the sanction of the Minister;
- (b) if any alterations in, or additions to, the draft Regulations submitted appear to the Minister to be necessary, the Minister may after consulting the Board, sanction the proposed body of Regulations with such additions and alterations as appear to be necessary.
- (2) If a draft body of Regulations is not submitted by the Board within the period of six months from the commencement of this Act or within such further period as may be fixed under sub-section (1), the Minister may, within six months after the expiry of such period or of such further period, make, after previous publication, Regulations which shall have the same force as if they had been prepared and sanctioned under sub-section (1)."

20. Power of Board and Committees to make by-laws.—(1) The Board and its Committees may make by-laws consistent with this Act and the Regulations—

- (a) laying down the procedure to be observed at their meetings and the number of members required to form a quorum ;
- (b) providing for all matters which consistently with this Act, and the Regulations are to be prescribed by by-laws ; and
- (c) providing for all other matters solely concerning the Board and its Committees and not provided for by this Act and the Regulations.

(2) The Board and its Committees shall make by-laws providing for the giving of notice to the members of the Board or Committee of the dates of meetings, and of the business to be considered at meetings, and for the keeping of a record of the proceedings of meetings.

(3) The Board may direct the amendment or rescission of any by-law made by a Committee under this section, and the Committee shall give effect to any such direction.

THE JAUNSAR BAWAR SECURITY OF TENURE AND LAND RECORDS ACT, 1952

(U. P. Act No. VI of 1953)

CONTENTS

Sections

1. Short title, extent and commencement.
2. Definitions.
3. Ejectment of tenants.
4. Sub-letting by tenants.
5. Record operations.
6. Records to be prepared.

Sections

7. Attestation of entries and decision of disputes.
8. Presumption regarding entries.
9. Validation.
10. Delegation of powers.
11. Rules.

(As passed by the U. P. Legislature)

An Act

*to provide for security of tenure and for the preparation of land records in
Pargana Jaunsar Bawar of Dehra Dun district*

Whereas it is expedient to provide for security of tenure and preparation of land records in Pargana Jaunsar Bawar of Dehra Dun district ;

It is hereby enacted as follows :

1. Short title, extent and commencement.—(1) This Act may be called the Jaunsar Bawar Security of Tenure and Land Records Act, 1952.

(2) It shall extend to the whole of Pargana Jaunsar Bawar of Dehra Dun District.

(3) It shall come into force at once.

*Note :—*The Act received the Assent of the Governor on February 13, 1953 and the English translation of the Act was published in U. P. Gazette Extra-ordinary dated February 15, 1953.

2. Definitions.—In the Act, unless there is anything repugnant in the subject or context—

- (a) "Collector" means the Collector of Dehra Dun district and includes an Assistant Collector of I Class empowered by the State Government by notification in the official *Gazette*, to discharge the functions of the Collector under this Act.
- (b) "Holding" and "Land-holder" shall have the meaning respectively assigned to them in the U. P. Tenancy Act, 1939.
- (c) "Law" includes any order, ordinance, rule, regulation, custom or usage having in the Pargana Jaunsar Bawar the force of law.
- (d) "State Government" means the Government of Uttar Pradesh.
- (e) "Tenant" includes a *maurusi* tenant or *ghair-maurusi* tenant as recognised in the *dastur-ul-amal* of Jaunsar Bawar or a tenant holding land in lieu of service.

3. Ejectment of tenants.—Notwithstanding any law to the contrary, a tenant shall not be liable to ejectment from his holding or any portion thereof except on one or more of the following grounds, that is to say—

- (i) that he is in arrears of rent for more than two years, or
- (ii) that he has committed an act detrimental to the land in the holding or inconsistent with the purpose for which it was let, or
- (iii) that he has sub-let his holding or any part thereof in contravention of the provisions of this Act.

4. Sub-letting by tenants.—No tenant shall sub-let the whole or any portion of his holding except where the lessor is—

- (i) an unmarried woman; or, if married, has been divorced, or separated from her husband, or is a widow;
- (ii) a minor whose father is dead;
- (iii) a person prosecuting studies in a recognised institution and is not more than 25 years of age;
- (iv) a lunatic or an idiot;
- (v) a person incapable of cultivating by reason of blindness or other physical infirmity;
- (vi) in the military, naval or air service of the Union; or
- (vii) undergoing imprisonment for a term exceeding three years:

Provided that in the case of holding held jointly by more persons than one, this exception shall not apply unless all such persons are at the commencement of the lease subject to one or other of the aforesaid disability.

5. Record operations.—The State Government may for purposes of preparation or a general or partial revision of the records specified in Section 6—

- (a) appoint an officer (hereinafter called the Special Record Officer) to be in charge of the record operations for the pargana of Jaunsar Bawar and such other officers as may be necessary to assist the Special Record Officer;

- (b) regulate the procedure of the officers so appointed, but not so as to restrict the operation of any enactment for the time being in force in any such area ; and
- (c) specify the powers or duties incident to the record operations to be exercised by such officers.

6. Records to be prepared.—(1) The records to be prepared in respect of each village of Pargana Jaunsar Bawar shall consist of—

- (a) a map and a field book ;
- (b) a register—
 - (i) of all the proprietors ;
 - (ii) of all persons cultivating or otherwise occupying land ; and
 - (iii) of all persons holding land revenue-free specifying the nature and extent of the interest of each.
- (2) The record shall also specify the following particulars :
 - (a) the land revenue payable by the proprietor ;
 - (b) the rent payable by the tenants ;
 - (c) the nature and class of each tenure-holder ; and
 - (d) any other conditions of tenure or particulars which the State Government may require to be recorded.

7. Attestation of entries and decision of disputes.—(1) All undisputed entries in the record shall be attested by parties interested and all disputes regarding such entries shall be decided on the basis of possession.

(2) If in the course of enquiry into the dispute under this section the Special Record Officer is unable to decide as to which party is in possession, he shall ascertain by summary enquiry, who is the person best entitled to the property and shall put such person in possession.

(3) No order as to possession passed under this section shall debar any person from establishing his right to property in any Civil or Revenue Court having jurisdiction.

8. Presumption regarding entries.—All entries in the record prepared in accordance with the provisions under this Act shall be presumed to be true until the contrary is proved.

9. Validation.—Whereas with a view to the stabilizing and reforming the land tenure system in Jaunsar Bawar Pargana, the State Government directed the preparation and revision of land records in the said area in accordance with the principles laid down in the U. P. Land Revenue Act, 1901 ;

And whereas the State Government has issued rules, orders and instructions for the said purpose ;

And whereas these records have already been prepared in the case of some areas and are under preparation in others ;

And whereas it is necessary that the rules, orders and instructions so issued and the records in so far as they have been prepared as aforesaid should be conferred legal validity ;

Now, therefore, it is hereby declared that all rules, orders and instructions issued for the preparation or revision of records aforesaid

shall, within three months of the commencement of this Act, be published by notification in the *Gazette* and upon such publication the rules, orders and instructions so published shall, in so far as they are not inconsistent with the provisions of this Act be and be deemed to be the rules, orders or instructions duly made or issued under or in pursuance of the provisions of this Act and every action or proceeding taken, entry made or thing done, powers and jurisdiction exercised will be as good and valid in law as if the provisions of this Act had been in force on all material dates.

10. Delegation of powers.—The State Government may by notification in the official *Gazette* delegate to any officer or authority subordinate to it any of the powers conferred on it by this Act to be exercised subject to any restrictions or conditions as may be specified in the notification.

11. Rules.—The State Government may, by order, frame rules for—

- (a) the procedure to be followed in ejectment, under Section 3 ;
- (b) the matters relating to sub-letting of holdings by tenant ;
- (c) the form, contents, method of preparation, attestation and maintenance of the records prepared under this Act ;
- (d) the procedure to be followed in suits, applications, and other proceedings under this Act ;
- (e) the time within which applications and appeals may be presented under this Act ;
- (f) the fees to be paid in respect of appeals and applications under this Act ;
- (g) the duties of any officer or authority having jurisdiction under this Act and the procedure to be followed by such officer or authority ;
- (h) the transfer of proceedings from one officer or authority to another ;
- (i) the guidance generally of officers for carrying out the provisions of this Act ; and
- (j) any other matter for which provision is in the opinion of the State Government necessary for giving effect to the provisions of this Act.

RULES FRAMED UNDER THE JAUNSAIR BAWAR SECURITY OF TENURE AND LAND RECORDS ACT, 1952

CHAPTER I

Preliminary

1. Title and commencement.—(1) These rules may be called the Jaunsar Bawar Security of Tenure and Land Records Rules, 1955 ?

(2) These rules shall come into force from the date of publication of this notification in the official *Gazette*.

2. Definitions.—In these rules, unless there is anything repugnant to the subject or context :

- (i) "Act" means the Jaunsar Bawar Security of Tenure and Land Records Act, 1952 ;
- (ii) "Section" means a section of the Act ; and
- (iii) words and expressions "Assistant Collectors", "Assistant Collector-in-charge of sub-divisions", "Commissioner", "Board" and Tahsildar" shall have the meanings assigned to them in the U. P. Land Revenue Act, 1901.

CHAPTER II

Procedure to be followed in ejectments

3. Suit to be filed for ejectment.—A tenant shall be liable to ejectment on any one or more of the grounds specified in Section 3 on the suit of the person from whom he holds the land.

4. Procedure for determination of suits.—In all suits referred to in Rule 3 the same procedure shall be followed as is prescribed for regular suits in the rules, published in Government notification No. 66-A, dated July 10, 1879, for the administration of justice in Pargana Jaunsar Bawar.

5. Ejectment of sub-tenants.—In a suit for ejectment of a tenant on the ground specified in clause (iii) of Section 3, the person holding from him shall also be made a party.

6. Time for execution.—Where the court orders ejectment of a tenant in a suit referred to in Rule 3, delivery of possession in execution of such order shall not be made before the crops, if any, standing on the holding from which the ejectment is to be made, have been harvested.

CHAPTER III

Sub-letting

7. Duration of sub-lease.—Where a holding is sub-let by a tenant in accordance with Section 4, the sub-lease shall not remain in force for more than one year after the lessor dies or the disqualification from which he suffered at the time of granting the sub-lease ceases.

CHAPTER IV

Maintenance of maps and records

8. Inspection tour.—In order to maintain the map and khasra, the patwari shall make at least one field-to-field inspection every year in each village of his circle. This tour shall begin from March 1 and shall be completed by June 15.

9. Copy of map for correction.—The Patwari shall not record any changes on the copy of the map supplied to him at the last survey. He shall ordinarily make a tracing from this map for the purpose of recording changes, but where the maps have been printed, he may obtain a printed copy thereof for this purpose. The map for recording changes may be used year after year until it becomes unserviceable either through wear and tear or through a large number of alterations. When it has become unserviceable, the patwari shall, under the orders of the

Supervisor Kanungo, obtain from the Registrar Kanungo a new copy of the map and after showing thereon the field-boundaries, as they exist and omitting those that have disappeared, file the old map with the Registrar Kanungo after it has been signed by the Supervisor Kanungo in token of his test.

10. Correction of map.—During his inspection, the patwari shall compare the fields one by one with his map and shall note thereon all changes in field-boundaries and other alterations on the map after making necessary measurements. Changes in the fields may in the first instance be shown in pencil, but must afterwards be made in red ink. When a field is found to have been divided into two or more portions and one of the portions is held or cultivated by any person other than the recorded tenant, he shall give a separate number to each portion, writing the original number as numerator and the fractional number as denominator :

Provided that where the portions are in the cultivatory possession of one and the same person under the same class of tenure and belong to one and the same khewat khata, they need not be given separate numbers ; the division being shown in this case by dotted lines as if they were new terraces. Where some of the terraces have been dismantled, the dotted lines will be omitted.

Where two or more fields in one and the same khewat khata and in the cultivatory possession of one and the same cultivator and held under the same class of tenure have been united by removal of boundaries which separated them, the entries for the field so formed shall be made opposite the first of the component fields, a reference to the combination being given in the remarks column against all the component fields.

Where extensive survey operations are required at any time in order to map new cultivation, the patwari shall apply to the Supervisor Kanungo for the use of the necessary instruments and for such assistance as may be required. Such application should be made not later than February in the year in which the necessity arises. In carrying out survey, the instructions given in the Rules and Instructions for Survey of Villages should *mutatis mutandis* be followed. In any case the map shall be completed and the alterations inked by June 30, every year.

11. Preparation of khasra.—Khasra is a field-book in which the patwari shall enter, during his inspection, all changes in boundaries and all facts required for the correction of the khatauni or for agricultural statistics. It shall be prepared in the form given below :

Form of Khasra

- (1) Number of field.
- (2) Area in acres.
- (3) Name of tok with names of proprietors and number of khewat-khata.
- (4) Number of khatauni khata.
- (5) Name of tenant, as classified in Part II of the khatauni.
- (6) Name of tenant, if any, as classified in Part II of the khatauni.

- (7) Method of irrigation and wells.
 (8) Crop.
 (9) Irrigated Area Kharif.
 (10) Unirrigated
 (11) Crop.
 (12) Irrigated Area Rab.
 (13) Unirrigated
 (14) Crop.
 (15) Irrigated Area Zaid.
 (16) Unirrigated
 (17) Irrigated Dofasli Area.
 (18) Unirrigated
 (19) Class of land Details of uncropped land to agree with the
 (20) Area columns of the area statements.
 (21) Remarks.

Form of Khatauni

In making entries in the khasra the rules in Chapter AV of the Land Records Manual shall *mutatis mutandis* be followed. The khasra shall be completed by June 15 every year. After completion the patwari shall retain the khasra for one year with him and file it with the Registrar Kanungo on or before July 31, of the year following.

The Supervisor Kanungo shall check at least 10 per cent of the entries on the spot in order to satisfy himself that the patwari has made the entries in the khasra in accordance with the actual fact. The Tahsildar and the Sub-divisional Officer, while on tour, shall try to check the spot work in as many villages as possible.

12. Crop and area statements.—The patwari shall prepare kharif and rabi crop statements and area statement along with his *partial* and file the statements with the Registrar Kanungo through the Supervisor Kanungo up to July 31 every year. The forms of crop and area statements shall be the same as are in use in the rest of Uttar Pradesh. The consolidated crop and area statements shall be sent by the Registrar [Kanungo to the district headquarters, for compilation in the district figures of the year following.

13. Preparation of Khatauni.—A khatauni is a register of all persons cultivating or otherwise occupying land in a village. It also indicates the names of the proprietors concerned. It shall be prepared in the form given below :

Form of Khatauni

Village		Khata		Tehsil		District
Serial No. of Khewat Khata	Name of tok	Name of proprietors with parentage, residence and share	Land revenue and cesses payable	Serial No. of Khatauni Khata	Name of cultivator with parentage and residence in the case of joint holdings	
1	2	3	4	5	6	

Khasra No. of each field	Area of each field in acres	Rent payable by the cultivator	Substance, number and date of order effecting change in the Khatauni with designation of authority passing the order as attested by the Registrar Kanungo					Remarks
			I year	II year	III year	IV year	V year	
7	8	9	10	11	12	13	14	15

- (i) The Khatauni shall be prepared quinquennially. But if in any of the intervening years of quinquennium, there takes place any settlement or revision of records or consolidation of holdings operations, a new quinquennium Khatauni shall be prepared on completion of such operations and shall remain in use for five years.
- (ii) Every year the patwari shall commence the preparation of the Khatauni of the succeeding quinquennium from May 16 and shall complete it by the end of June of the same year at the latest, so that it should be ready at the commencement of the quinquennium to which it relates. He shall fill in columns 1 to 9 of the new Khatauni from the previous Khatauni incorporating all the changes ordered by competent authorities and noted from time to time in columns 10 to 14 of the Khatauni. Such changes shall be recorded in the new Khatauni in red ink. No changes shall be made in the Khatauni by the patwari on his own initiative excepting those relating to the divisions and unions of field, the serial numbers of khatas and the entry of minor's age and the name of the guardian, which shall be made only at the time of preparing the new Khatauni. Subsequent changes intimated during each year shall be entered in column 10 in the first year, column 11 in the second year, column 12 in the third year, column 13 in the fourth year and column 14 in the fifth year. Against each khata in which no orders have been noted in any year, a line shall be drawn in red ink at the end of the year across the column intended for recording changes for that year.
- (iii) The arrangement of land within each village the Khatauni shall be as follows :

Part I

- (1) Land cultivated by proprietors.
- (2) Land held by Maurusi tenants.
- (3) Land held by Ghair Maurusi tenants.
- (4) Land held by a tenant in lieu of services.

- (5) Land held as occupiers without title when there is no one already recorded in column 5 of the khasra.
- (6) Land held by others than those mentioned above.
- (7) Groves of—
 (a) Proprietor.
 (b) tenants.
- (8) Culturable land.
- (9) Barren land.
- (10) Sub-tenants of land mentioned in columns 2 to 6.

Part II

- (iv) The heading describing each class or sub-class of land with its number should be written in red ink across the columns. Where there is no land of a particular class or sub-class in the village, the number and heading of the class or sub-class should still be entered and followed by the entry "nil".
- (v) The khatauni khata shall be numbered serially for the whole village. Parts I and II shall each have a fresh serial number and in the latter, below the serial number of each khata, the number of the khatauni khata in Part I to which it appertains shall be shown as denominator.
- (vi) Within each village all fields in a holding which are held by the same person or persons under the same tenure shall be entered consecutively in the order of khasra numbers and the total number of plots as well as the area and the rent of each holding shall be entered below the last field number.
- (vii) Columnwise totals of each class or sub-class shall be given below the entries of the holding contained in that class or sub-class. Totals for each village shall be given in red ink in Part I as well as in Part II of the khatauni.
- (viii) The term of commencement of tenure shall be recorded in column 6 of the khatauni for class (1) to (6) and (10). In case of those holding land from before 1360 Falsi, the term shall be recorded as "from before 1360 Falsi" and in the case of others it shall be recorded as the Fasli year from which the tenure commenced.
- (ix) Ten per cent. of the total number of khatas including all the new entries shall be verified by the Supervisor Kanungo on the spot and also tested when the khatauni is completed. The khatauni shall be deposited with the Registrar Kanungo by July 31 of the year in which Khatauni has been prepared.

14. Errata list.—As soon as the new khatauni has been prepared, the patwari shall draw up the list of errata in the following form in respect of the new khatauni. Every correction and alteration and every doubtful entry on the fact of the khatauni shall be shown in the form which shall be signed both by the patwari and the Supervisor Kanungo. The errata list shall be deposited with the Registrar Kanungo.

Form of errata list

Village		Khata	Pargana		District	
Serial No.	Serial No. of Khatauni Khata	Column of Khatauni	Wrong or doubtful entry	Correct entry	Remarks	
1	2	3	4	5	6	

15. Statement of holdings and rentals.—In the month of July each year the patwari shall prepare with the help of his khatauni, a statement in the following form. The total of each class in the khatauni shall be entered in the appropriate column of the statement. The totals for the previous year shall be entered below those for the current year and any marked variations shall be carefully explained in a note in the remarks column.

Form of statements of holdings and rentals

Village		Khata		Tahsil		District		
Name of village	Class I—Land cultivated by land-holders		Class 2—Maurusi tenants		Class 3—Ghair Maurusi tenants		Class 4—tenants in lieu of service	
	Area	Rent, if any	Area	Rent	Area	Rent	Area	Rent
1	2	3	4	5	6	7	8	9

Class 5—Occupiers of land without title		Class 6—other tenants		Total of Khatauni columns 2 to 13		Class 10—Part II of the Khatauni		Remarks
Area	Rent	Area	Rent	Area	Rent	Area	Rent	
10	11	12	13	14	15	16	17	18

The statement shall be filed with the Registrar Kanungo not later than July 31 each year.

CHAPTER V

Miscellaneous

16. Procedure to be followed in suits, applications and other proceedings under the Act.—All suits for ejectment of a tenant from

a holding on the grounds specified in clause (i) of Section 3 shall be instituted in the Court of the Tahsildar, while suits for ejectment on any other ground specified in that section shall lie in the Court of the Assistant Collector in charge of the sub-division.

17. The time within which suits may be filed.—A suit for ejectment on any of the grounds specified in Section 3 shall be filed between the 1st day of June and the 31st day of August.

18. Limitation for suits.—The period of limitation for the filing of suit for ejectment of a tenant on the grounds specified in clause (ii) of Section 3 shall be one year beginning from the date of commission of the act detrimental to the land in the holding or inconsistent with the purpose for which it was let.

19. Appeals.—Appeals from orders of the Tahsildar or the Assistant Collector in charge of the Sub-division [or the Assistant Record Officer]¹ shall lie to the Collector and a second appeal shall lie from the orders of the Collector to the Commissioner.

20. Revision.—The Board may call for the record of any case decided by any subordinate revenue court and if such subordinate court appears—

- (a) to have exercised a jurisdiction not vested in it bylaw ; or
- (b) to have failed to exercise a jurisdiction so vested ; or
- (c) to have acted in the exercise of its jurisdiction illegally or with substantial irregularity, it may pass such order in the case as it thinks fit.

21. Limitation for appeals.—No appeal shall be brought after the expiration of sixty days from the date of the order complained of.

22. Fees to be paid in respect of suits, appeals and applications under the Act.—The fees prescribed for suits, appeals and applications in the Court Fees Act, 1870, shall apply to proceedings under the Act or these rules.

23. Transfer of cases by the Board.—The Board or the Commissioner, Meerut Division may, on sufficient cause being shown, transfer any suit, application or appeal or class of suits, applications or appeals from any revenue court to any other revenue court competent to deal therewith.

24. Transfer of cases by the Commissioner.—The Commissioner of the Meerut Division may exercise within the limits the same powers as the Board in the preceding rule.

25. Transfer of cases by the Collector.—The Collector may transfer any case from a subordinate court to another court subordinate to him competent to deal therewith.

1. Inserted vide Noti. No. 1964/1-A-848-53 dated June 15, 1956 pub. in U. P.

Gaz. dated 23rd June, 1956, Pt. I-A, p. 811.

UTTAR PRADESH JUTE GOODS (CONTROL) ACT, 1950¹

(U. P. Act No. XV of 1950)

CONTENTS

Sections	Sections
1. Short title, extent and commencement.	5. Penalties.
2. Definitions.	6. Offences by Corporation.
3. Appointment of Controller.	7. Cognizable offences.
4. Power of Controllers to control production, supply and distribution of jute goods.	8. Protection of action taken under the Act.
	9. Repeal.

Authoritative English Text of the Uttar Pradesh Jute ki Bani Vastuon ke Niyanttran ka Adhiniyam Act, 1950

An Act

to provide for regulation of the production, supply and distribution of jute goods

Whereas by the United Provinces Jute Goods (Control) Ordinance, 1949, provision was made for regulation of the production, supply and distribution of jute goods ;

Whereas it is expedient to replace the said Ordinance by an Act of the State Legislature ;

It is hereby enacted as follows :—

1. Short title, extent and commencement.—(1) This Act may be called the Uttar Pradesh Jute Goods (Control) Act, 1950.

(2) It extends to the whole of Uttar Pradesh.

(3) It shall come into force at once.

2. Definitions.—In this Act, unless there is anything repugnant in the subject or context,—

(a) “Jute goods” includes all jute manufactures ;

(b) “Controller” means the Jute Controller appointed by the State Government under Section 3 ;

(c) “State Government” means the Government of Uttar Pradesh.

3. Appointment of Controller.—The State Government may, by notification in the official *Gazette*, appoint any person to be Jute Controller for the State.

4. Power of Controllers to control production, supply and distribution of jute goods.—(1) Subject to the control of the State Government, the Controller, so far as it appears to him to be necessary

1. For S. O. R. see *Gaz. Extra.* d. Mar. 1. 1950, P. 1 ; for discussion, see L. A. Pro., d. Mar. 9, 1950, in Vol. LXVII, p. 171—179, d. April 14, 1950, in Vol. LXXI, p. 114 and L. C. Pro., d. Mar. 11 and 13, 1950 and April 20, 1950, in Vol. XV, pp. 158, 202—203 and 431 respectively.

Passed in Hindi by the Uttar Pradesh Legislative Assembly on March 9, 1950, and by the Uttar Pradesh

Legislative Council on March 13, 1950.

Received the assent of the President on March 16 1950, under Article 201 of the Constitution of India and was published in the *Uttar Pradesh Gazette Extraordinary*, dated March 16, 1950.

The U. P. Jute Goods (Control) Ordinance, IX of 1949, has been repealed by s. 9 of this Act (U. P. Act XV of 1950).

or expedient for regulating, maintaining or increasing the production, supply and distribution of jute goods may by order in writing—

- (a) require any person holding stock of jute goods to sell the whole or a specified part thereof at such prices and to such person (including the Central and State Governments) or in such circumstances as may be specified in the order ;
 - (b) require any person engaged in the production of jute goods to comply with such directions as may be given in the order as to type, quality and quantity of jute goods to be produced or delivered by him from time to time.
- (2) Any person to whom an order is issued under sub-section (1) shall comply with it notwithstanding any contract to which he is a party.

5. Penalties.—If any person contravenes any order issued to him by the Controller under Section 4, he shall be punishable with imprisonment for a term which may extend to 3 years or with fine or with both.

6. Offences by Corporation.—If the person contravening an order issued by the Controller under Section 4 is a Company or other body corporate, every director, manager, secretary or other officer or agent thereof shall, unless he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention, be deemed to be guilty of such contravention.

7. Cognizable offences.—No Court shall take cognizance of any offence punishable under this Act, except on a report in writing of the facts constituting such offences made by the Controller.

8. Protection of action taken under the Act.—(1) No suit, prosecution or other legal proceeding shall be against any person for anything which is in good faith done or intended to be done in pursuance of any order made under Section 4.

(2) No suit, or other legal proceeding shall lie against the State Government or the Controller for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of any order made under section 4.

9. Repeal.—The United Provinces Jute Goods (Control) Ordinance, 1949, is hereby repealed and the provisions of Sections 6 and 24 of the United Provinces General Clauses Act, 1904, shall apply as if it had been an Act repealed by an United Provinces Act.

THE KANPUR URBAN AREA DEVELOPMENT ACT, 1945¹

(U. P. Act No. VI of 1945)

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1. Short title, extent and commencement.
2. Definitions.
3. Repeal.

This Act was prepared by the Governor in exercise of the powers assumed by him by the Proclamation, d. Nov. 3, 1939, issued under Section 93 of the G. of I. Act, 1935, and was published,

with S. O. R., in *Gaz.* 194 Pt. VII, pp. 3—16. It was re-enacted and continued by Section 2 and Sch. of U. P. Act XIII of 1948.

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Amended by the U. P. Act No. II of 1948^a

Amended by the U. P. Act No. IV of 1951^b

Adapted and modified by the Adaptation of Laws Order, 1950

(Prepared by His Excellency the Governor of the United Provinces in exercise of the powers assumed by him by the Proclamation, dated November 3, 1939, issued under Section 93 of the Government of India Act, 1935.)

[Received the assent of the Governor of the United Provinces on August 4, 1945 and was published^a in the United Provinces Government Gazette on August 11, 1945].

An Act

to provide for the Development and Expansion of the Urban Area of Kanpur

2. For S. O. R., see *Gaz. Extra.*, d. Sept. 12, 1947; for discussion, see *L. A. Pro.*, d. Nov. 6, 1947, in Vol. XLIII, p. 299 and d. Feb. 24, 1948, in Vol. XLIV, p. 53; and *L. C. Pro.*, d. Sept. 15, and 20, 1947, in Vol. IX, pp. 474, 802—807 and Feb. 24, 1948 in Vol. X, p. 603 respectively; for publication, see *Gaz. Extra.*, d. Jan. 12, 1948, pp. 1-2. The Kanpur Urban Area Development Board (Amendment of Constitution) Ordinance No. VI of 1947 expired.

3. For S. O. R., see *Gaz. Extra.*, d. Nov. 2, 1950; for discussion, see *L. A. Pro.*, d. Jan. 3, 1951, in Vol. LXXXVII,

p. 108, d. Jan. 16, 1951, in Vol. LXXXIX, pp. 80-81 and d. Feb. 28, 1951, in Vol. XCI, p. 133 and *L. C. Pro.*, d. Dec. 20 and 26, 1950, in Vol. XXI, pp. 42 and 162-163, and d. Feb. 26, 1951, in Vol. XXII, p. 154, respectively; for publication, see *Gaz. Extra.*, d. Jan. 29, 1951, p. 3-4. The Kanpur Urban Area Development Board (Amendment of Constitution) (Validation of Proceedings) Ordinance No. 14 of 1950 *rep.* by Section 4 of U. P. Act IV of 1951.

4. See *Gaz.*, d. Aug. 11, 1945, Pt. VII A, pp. 11-26.

Preamble.—Whereas it is expedient to make provision for the development and expansion of the urban area of Kanpur ;

And whereas by the Proclamation, dated the 3rd day of November, 1939, promulgated under Section 93 of the Government of India Act, 1935, the Governor of the United Provinces has assumed to himself all powers vested by or under the aforesaid Act in the Provincial Legislature :

And whereas the said Proclamation is still in force :

Now, therefore, the Governor in exercise of the powers aforesaid is pleased to make the following Act.

CHAPTER I

Preliminary

1. Short title, extent and commencement.—(1) This Act may be called the Kanpur Urban Area Development Act, 1945.

(2) It extends to the area at present administered by the Kanpur Municipal Board, and to an area within ten miles radius of the Central Post Office and south of the river that may be notified by the [State Government]¹ in the official *Gazette*, with the exception of the area administered for the time being by the Kanpur Cantonment Board, and to any other area that may from time to time be notified by the [State Government]¹ as an area to which this Act applies.

(3) The Act shall come into force on such date² as the [State Government]¹ may by notification in the official *Gazette* appoint in this behalf.

2. Definitions.—In this Act, unless there is anything repugnant in the subject or context,—

(1) Words and expressions not defined in this Act have the same meaning as in the United Provinces Municipalities Act, 1916 (hereinafter called “the Municipalities Act”).

(2) “Act” means the Kanpur Urban Area Development Act, 1945.

(3) “Board” means the Development Board established under this Act.

(4) “Building line” means the line (in the rear of the street alignment) up to which the main wall of a building abutting on a projected or existing public street may normally extend.

(5) “Bye-law” means a bye-law made by the Board in exercise of a power conferred by this Act.

(6) “Cantonment Board” means the Kanpur Cantonment Board.

(7) “Development Area” means any area which is under a development scheme specified in Chapter VII, and a “scheme” means a development scheme under that chapter.

(8) “High Court” means the High Court of Judicature at Allahabad.

(9) “Land” has the same meaning as in clause (a) of Section 3 of the Land Acquisition Act, 1894.

1. Subs. by the A. O. 1950 for [Provl. Govt.]

2. The Act came into force on Sept. 1,

1945, see not. no. 3603/XI—9945, d. Aug. 18, 1945, in *Gaz.* 1945. Pt. III, p. 103.

(10) "Municipal Board" means the Kanpur Municipal Board.

(11) "Occupier" includes any person for the time being paying, or liable to pay, to the owner the rent, or any portion of the rent, of the land or building, or damages on account of the use and occupation of such land or building, and also an owner living in or otherwise using his own land or building, and also rent-free tenant.

(12) "Owner" when used in reference to any land or building, includes the person for the time being receiving or entitled to receive the rent or part of any land or building whether on his own account or as agent or trustee for any person or society or for any religious or charitable purpose, or as a receiver who would so receive such rent if the land, building or part thereof were let to a tenant.

(13) "Prescribed" means prescribed by this Act or by any rule or bye-law made thereunder.

(14) "President" and "Executive Officer" mean the President and Executive Officer of the Kanpur Development Board, respectively.

(15) "[State Government]"¹ means the Government of [Uttar Pradesh]².

(16) "Rule" means a rule made under this Act by the [State Government].¹

(17) "Street alignment" means a line dividing the land comprised in and forming part of the street from the adjoining land.

(18) "Tribunal" means the tribunal established under Chapter XI.

(19) "Trust" means the Kanpur Improvement Trust.

(20) "Waste and refuse" shall include nightsoil and other contents of water closets, latrines, privies, urinals, cesspools and drains, polluted water from sinks, bathrooms, stables, cattle-sheds and other like places, and trade effluents and discharges from factories of all kinds.

3. Repeal.—The United Provinces Town Improvement Act, 1919, and the United Provinces Town Improvement (Appeals) Act, 1920 are hereby repealed so far as they apply to the area to which this Act applies.

4. Effect of Repeal.—With effect from the date this Act comes into force—

(a) the Trust shall be deemed to have been dissolved, and the trustees shall vacate their offices, and

(b) all properties, funds, and dues which are vested in or realizable by the Trust and its Chairman respectively shall vest in and be realizable by the Board and its President, respectively, and

(c) all liabilities enforceable against the Trust shall be enforceable only against the Board, and

(d) for the purpose of completing the execution of any scheme sanctioned under the United Provinces Town Improvement Act, 1919, the functions of the Kanpur Improvement Trust

1. Subs. by the A. O. 1950 for [Provl. Govt.].

2. Subs. by *ibid* for [the United Provinces].

and the Chairman of the said Trust shall be discharged by the Kanpur Development Board and the President of the Board respectively, and

- (e) the management of all land classed as Special Nazul shall be transferred to the Board.

CHAPTER II

Establishment of a Development Board

5. Establishment of a Development Board.—There shall be established for the area mentioned in sub-section (2) of Section 1 an authority to be called the Kanpur Development Board. The Board shall be a body corporate having a common seal, and shall by the said name sue and be sued.

6. Constitution of the Board.—(1) The Board shall consist of the following members :

- (a) A President.
- (b) The District Magistrate and Collector of Kanpur *ex officio*.
- (c) The Labour Commissioner, [Uttar Pradesh]¹, *ex officio*.
- (d) The Chairman of the Municipal Board, *ex officio*.
- (e) The President of the Cantonment Board, *ex officio*.
- (f) Three members of the Municipal Board to be elected by the Municipal Board by single transferable vote in such manner as may be prescribed ².
- (g) [Sixteen]³ members, not being servants of the [Government]⁴ to be nominated by the [State Government]⁵ * * *.

(2) The President and the members mentioned in clauses (f) and (g) of sub-section (1) shall be appointed by the [State Government]⁶ by notification in the official *Gazette*.

(3) If the Municipal Board does not by such date as may be fixed by the [State Government]⁶ elect its representatives to the Board, the [State Government]⁶ shall, by notification, appoint three such representatives from the Municipal Board, and the persons so appointed shall be deemed to be members of the Board as if they had been duly elected.

7. Resignation.—Any member of the Board other than an *ex officio* member may at any time resign his office by submitting his resignation to the [State Government]⁶ :

Provided that the resignation shall not take effect until it has been accepted.

8. Life of the Board.—The Board shall be in existence for a period of five years from the date of the commencement of this Act :

Provided that this period may be extended from time to time by the [State Government]⁶, and

1. Subs. by the A. O. 1950 for [United Provinces].

2. For rules *re.* election of members, see not. no. 3603-I/XI—657-45, d. Aug. 15, 1945, Pt. III, p. 105.

3. Subs. by Section 2 of U. P. Act II of 1948 for [eight].

4. Subs. by the A. O. 1950 for [Crown].

5. Subs. by *ibid* for [Provl. Govt.].

6. The words [from persons resident in the area to which this Act applies] omit by Section 2 of U. P. Act II of 1948.

Provided further that the Board may be dissolved at any time by the [State Government]¹ if the circumstances so require.

9. Term of Office of members.—(1) Subject to the provisions of Section 11 the term of office of the President shall be the life of the Board.

(2) The term of office of *ex officio* members of the Board shall be the life of the Board, and the term of office of the other members referred to in clauses (f) and (g) of sub-section (1) of Section 6 shall be a period not exceeding three years :

Provided that at the expiry of such period such members may be re-elected or re-nominated as the case may be and provided further that no representative of the Municipal Board shall continue to be a member of the Board, if he ceases to be a member of the Municipal Board.

10. Emoluments of President and other members.—(1) No member of the Board other than the President shall receive any salary or remuneration from the funds of the Board.

(2) The President shall receive such emoluments as may be fixed by the [State Government]¹ from time to time, and shall be subject to such terms and conditions of service as may be specified by the [State Government]¹.

(3) The President shall not hold any other office carrying with it any emolument, except with the permission of the [State Government]¹, and shall devote his whole time to his duties and responsibilities under this Act.

11. Removal and suspension of members.—(1) The [State Government]¹ may remove from the Board any member who—

- (a) refuses to act, or becomes incapable of acting, or absents himself for more than three consecutive months from the meetings of the Board or of any Committee of which he is a member, and is unable to explain such absence to the satisfaction of the Board ; or
- (b) is an undischarged insolvent, or has compounded with his creditors ; or
- (c) has been sentenced by a criminal court to imprisonment for a term exceeding six months or has been ordered to find security for good behaviour under the Criminal Procedure Code, such sentence or order not having been subsequently reversed or remitted, or the offender pardoned ; or
- (d) has knowingly acquired or continued to hold without the permission in writing of the [State Government]¹ directly or indirectly or by a partner, any share or interest in any contract or appointment with, by, or on behalf of the Board ; or
- (e) has knowingly acted as a member of the Board in a matter other than a matter referred to in clauses (d) or (e) of sub-section (2) in which he or his partner, if any, had, directly or indirectly, a personal interest, or in which he was professionally interested on behalf of a client, principal or other person ; or

- (f) has acted in contravention of Section 26; or
- (g) being a legal practitioner, in any suit or other proceeding, acts or appears on behalf of any other person against the Board, or acts or appears on behalf of any other person in any criminal proceeding instituted by or on behalf of the Board.
- (2) A person shall not be deemed for the purpose of sub-section (f) to acquire or continue to have any share or interest in a contract or employment by reason only of his—
- having a share or interest in any lease, sale or purchase of land or buildings or, in any agreement for the same, provided that such share or interest was acquired before he became a member, or with the previous sanction of the [State Government]¹; or
 - having a share in a joint stock company, which shall contract with, or be employed by or on behalf of the Board; or
 - having a share or interest in a newspaper in which an advertisement relating to the affairs of the Board is inserted; or
 - holding a debenture or otherwise being interested in a loan raised by or on behalf of the Board; or
 - being retained by the Board as a legal practitioner; or
 - having a share or interest in the occasional sale of an article in which he regularly trades to the Board to a value not exceeding, in any one year, such amount as the Board with the sanction of the [State Government]¹ may fix in this behalf.
- (3) The [State Government]¹ may remove from the Board a member who in its opinion has so flagrantly abused in any manner his position as a member as to render his continuance on the Board detrimental to the public interest, or who in its opinion is unsuitable to remain a member of the Board.
- (4) The [State Government]¹ may suspend any member of the Board pending an enquiry against him.
- (5) A decision of the [State Government]¹ under this section shall be final and shall not be questioned in any court of law.
- (6) No order of removal under the foregoing provisions of this section shall be passed unless the member concerned has been given an opportunity to submit his explanation in writing, and when such order is passed the reasons therefor shall be placed on record.

12. Effect of removal.—A member of the Board, who has once been removed, shall not be eligible for re-appointment to the Board.

(2) The [State Government]¹ may declare void any transaction in connexion with which a member has been removed under sub-section (1) of Section 11.

13. Casual vacancy.—(1) When the seat of a member nominated by the [State Government]¹, becomes vacant by resignation,

1. Subs. by the A. O. 1950 for [Provl. Govt.]

removal or death, the [State Government]¹ shall appoint a person to fill the vacancy.

(2) When the seat of a member mentioned in clause (f) of sub-section (1) of Section 6 becomes vacant by resignation, removal or death, the vacancy shall be filled in the manner provided by the said clause (f) within two months of such vacancy being notified to the Municipal Board by the Board :

Provided that if the Municipal Board fails to elect a member to fill the vacancy within such period, the provisions of sub-section (3) of Section 6 shall apply.

(3) The term of office of a member appointed under this section shall be the remainder of the term of office of the member in whose place he has been appointed :

Provided that no person appointed under sub-section (2) shall continue to be a member of the Board if he ceases to be a member of the Municipal Board.

(4) If the President, through illness or for any other reason, is likely to be absent for a period exceeding two months at a time, the [State Government]¹ shall appoint another person to take his place.

CHAPTER III

Duties and Powers of the Board

14. Duties and powers of the Board.—It shall be the duty of the Board to develop, execute and maintain, all works, and to carry out all operations, in connexion with the following, namely—

(a) The provisions of water supply.

(b) All public drains and sewers within the Board's limits, and the disposal of all waste and refuse relating thereto, as may be notified by the Board from time to time.

Explanation.—For the purposes of this clause the disposal of waste and refuse shall not include house scavenging as defined in Section 195 of the Municipalities Act.

(c) Such public streets under the control of the Municipal Board and the District Board, Kanpur, as may be notified by the Board from time to time, including the removal of encroachments.

(d) Subject to the provisions of the Indian Motor Vehicles Act, 1939, all matters relating to the regulation of speed limits for vehicular traffic, the provision of islands, refuges, and lighting in so far as it affects traffic, and the provision of traffic signs, direction posts and halting places.

Explanation.—For the purposes of this clause the words "lighting in so far as it affects traffic" shall not include the ordinary arrangements for the lighting of streets.

(e) Any matter relating to the general control and regulation of traffic, both pedestrain and vehicular.

(f) Town planning including slum clearance.

1. Subs. by the A. O. 1950 for [Provl. Govt.]

- (g) The organization of transport.
- (h) River training.
- (i) The framing and execution of schemes under Chapter VII, including the provision of adequate housing.
- (j) The collection of such information and statistics as may be necessary for the purposes of this Act, including the taking of a census.
- (k) The location of markets and the provision of sites where hawkers and street vendors may carry on their trade.
- (l) Any other function of the Municipal Board, or any function of the Kanpur District Board, which the [State Government]¹ may hereinafter decide to transfer to the Board.

15. Effect of Board's powers on the Municipal Board.—(1) Notwithstanding anything contained in the Municipalities Act, all duties, powers, responsibilities and functions of the Municipal Board in respect of the matters specified in Section 14, except the duty and power of collecting such taxes and charges as may from time to time be assessed in respect of water supply, shall cease from the commencement of this Act, and except as otherwise directed by the Board all bye-laws made under head B, clauses (a), (b) and (c), head D, clauses (a) and (b), head E, clauses (a), (b) and (c), head H, clauses (b) and (g) of List I of sub-section (2) of Section 298 of the Municipalities Act shall be deemed to have been cancelled.

(2) The Board shall make bye-laws consistent with this Act for the purpose of carrying out its duties under the Act, and in particular and without prejudice to the generality of the aforesaid powers, the Board shall, in respect of an area comprised in a scheme under Chapter VII of this Act, make bye-laws for any of the matters referred to in Section 298 of the Municipalities Act.

16. Vesting of the waterworks in the Board.—With effect from the date on which notification No. 6057-C.X/C.D., dated July 16, 1942, under the Defence of India Rules is withdrawn the superintendence and administration of the waterworks shall vest in the Board.

17. Vesting in the Board of certain powers of the Municipal Board in respect of all or any of the matters mentioned in clauses (a), (b), (c) and (i) of Section 14.—(1) The duties, powers, functions and responsibilities of the Municipal Board under Sections 189 to 194, and Sections 203 to 236 of the Municipalities Act shall hereafter be transferred to, and be vested in, the Board.

(2) In respect of a scheme mentioned in clause (i) of Section 14 in addition to such powers as have been transferred to the Board under the foregoing provisions of this Act, the provisions of Sections 148, 178 to 186, 256, 257, 261 to 276, 278 and 283 to 288 of the Municipalities Act shall, so far as may be consistent with this Act, apply to all areas included in the said scheme for such period as the scheme may be in force, and any reference in the said sections to the Chairman or to any officer of the Municipal Board shall be construed as referring to the President or to an officer of the Board :

1. Subs. by the A. O. 1950 for [Provl. Govt.]

Provided that the Board may delegate to the President or to any servant of the Board all or any of the powers conferred by this section.

18. Supervisory powers of the Board.—The Board may have an investigation or inspection made through its own agency, or may issue any direction to the Municipal Board, in respect of the following :

- (a) Nazul (other than Special Nazul).
- (b) Public Health including arrangements for the sanitation and ventilation of houses and buildings and the prevention of diseases.
- (c) Building activities.
- (d) Any function of the Municipal Board that the [State Government]¹ may hereinafter decide to transfer to the supervision of the Board.

19. Action on failure of Municipal Board to carry out directions of the Board.—In the event of the Municipal Board's failing to comply with any direction issued under Section 18 within a period of one month, or such further extension as may be granted, the Board may, with the prior approval of the [State Government]¹, take over wholly or in part the particular work or function of the Municipal Board, and from the date of such taking over such work or function shall be deemed to have been transferred to the Board under clause (k) of Section 14.

20. Return of any work or function to Municipal Board.—(1) The Board may at any time return to the Municipal Board any work or function that has been taken over under the provisions of this Act after having made a report to the [State Government]¹.

(2) The Board shall have the power to issue such directions as it may think fit to the Municipal Board in respect of any such work or function as is mentioned in sub-section (1) for the proper maintenance and upkeep of the work or for the discharge of the function concerned.

*** 21. Failure of the Municipal Board to comply with a direction.**—In the event of the Municipal Board's failing to comply within a specified period with any direction issued under sub-section (2) of Section 20, the Board may—

- (a) have the necessary work done or function discharged through its own agency, and recover the charges and expenses so incurred from the Municipal Board, or
- (b) with the prior sanction of the [State Government]¹ reassume charge of the said work or function returned to the Municipal Board under Section 20.

CHAPTER IV

Proceedings of the Board and its Committees

22. Meetings of the Board.—(1) The Board shall meet together and shall from time to time make such arrangements as

1. Subs. by the A. O. 1950 for [Provl. Govt.]

are consistent with this Act with respect to the place, day, hour, notice, management, and adjournment, of such meetings and generally with respect to the transaction of business as it may think fit, subject to the following provisions, namely—

- (a) An ordinary meeting shall be held, so far as possible, once in every month.
- (b) The President may, whenever he thinks fit, and shall, upon a written request of not less than [eight]¹ members call an extra meeting.
- (c) The quorum for the transaction of business at a meeting shall be not less than [eight]¹ members of the Board.
- (d) Every meeting shall, if the President be present, be presided over by him, and if he is absent, by any such member present as may be chosen by the meeting.
- (e) Every matter coming before the Board shall be decided by a majority of votes of the members present, the person presiding having a casting vote in all cases of equality of votes.
- (f) Minutes shall be kept of the names of the members present and proceedings at each meeting in a book to be provided for this purpose, which shall be signed at the next ensuing meeting by the person presiding, and which shall be open to inspection by any member during office hours.

(2) No member shall be entitled to object to the minutes of any meeting, unless he was present at the meeting to which they relate.

23. Temporary association of non-members with the Board for particular purposes.—(1) The Board may associate with itself in such manner and for such period as may be prescribed by by-law any person whose assistance or advice may be necessary for carrying out its duties under this Act.

(2) The person so associated with itself by the Board shall have a right to take part in the discussions of the Board relating to that purpose, but shall not have the right to vote at a meeting of the Board and shall not be deemed to be a member of the Board for any other purpose.

24. Constitution and functions of Committees.—(1) The Board may from time to time appoint a committee consisting of persons of any of the following classes as it may think fit, namely—

- (a) members ;
- (b) persons associated with the Board under Section 23 ;
- (c) other persons whose assistance or advice the Board may desire as members of such committee.

(2) Every committee shall consist of not less than five persons of whom two shall be the President and the Executive Officer, or a nominee of each one of them.

(3) The Board may—

- (a) refer to such committee for enquiry and report any matter for which the committee has been appointed, and

1. Subs. by Section 2 (ii) of U. P. Act II of 1948 for [six].

- (b) subject to any rules or bye-laws made under this Act, delegate to such committee by resolution any of the powers or duties of the Board relating to the subject-matter for which the committee has been appointed.

(4) The Board may at any time dissolve or, subject to the provisions of sub-sections (1) and (2), alter the constitution of any such committee.

(5) Every committee shall carry out any instruction given to it by the Board, and every final decision of a committee relating to any matter under clause (b) of sub-section (3) shall be laid before the Board, which may confirm, modify or reject it :

Provided that this shall not be necessary in cases where the Board has delegated its powers to a committee under clause (b) of the said sub-section.

25. Meetings of Committees.—(1) A committee appointed under Section 24 may meet and adjourn as it thinks proper, but the President may, whenever he thinks fit, call an extra meeting of the committee, and shall do so on a written request of not less than three members thereof.

(2) The President shall preside at every meeting of a committee at which he is present, and if he is absent, the members present shall select a person from amongst themselves to preside.

(3) Every matter at a meeting of a committee shall be decided by a majority of the votes of the members present and voting, the person presiding having a casting vote in all cases of equality of votes.

(4) The quorum for the transaction of business at any meeting of a committee shall be not less than three members out of five, and if the committee consists of more than five persons, not less than one-half.

26. Members of and persons associated with the Board or a Committee not to take part in proceedings in which they are personally interested.—(1) A member of the Board or any committee, or a person associated with the Board under Section 23 or with such committee under Section 24, who—

(a) has, directly or indirectly, by himself or by any partner, employer or employee, any such share or interest as is described in Section 11 in respect of any matter, or

(b) has acted professionally in relation to any matter on behalf of any person having therein any such share or interest as aforesaid,

(c) shall not vote or take any other part in any proceedings of the Board or any Committee relating to such matter.

(2) If any member, or any person associated with the Board under Section 23, or any member of a committee appointed under this Act has, directly or indirectly, any beneficial interest in any land situated in an area comprised in any scheme framed under this Act, or in any area in which it is proposed to acquire land for any of the purposes of this Act—

(i) he shall before taking part in a meeting of the Board or a committee relating to such area, inform the person presiding at the meeting of the nature of such interest ;

- (ii) he shall not vote at any meeting of the Board or the said committee upon any resolution or question relating to such land ;
- (iii) he shall not, if so directed by the person presiding, take any part in the meeting of the Board or the said committee relating to such area.

CHAPTER V

Relations of the Development Board with the Commissioner and the State Government

27. Channel of correspondence.—(1) The Board may communicate and deal direct with the [State Government]¹.

(2) The Commissioner of the Division shall have no power over the Board, and the Board may communicate direct with the Municipal Board, the Kanpur District Board and the Kanpur Cantonment Board, provided that copies of the correspondence other than that of a routine nature are sent to the Commissioner of the Division for information through the District Magistrate.

28. Supply of information to Government.—(1) The President shall forward to the [State Government]¹ a copy of the minutes of the proceedings of each meeting of the Board within ten days from the date on which the minutes of the proceedings of such meeting were signed as prescribed in clause (f) of sub-section (1) of Section 22.

(2) If the [State Government]¹ so directs, the President shall forward to it copies of all papers which were laid before the Board for consideration at any meeting.

29. Power of State Government to call for information and to have investigation made into matters relating to Board.—

(1) The [State Government]¹ may require the President to furnish it with—

- (a) any return, statement, estimate, statistics, or other information regarding any matter relating to the Board, or
- (b) a report on any such matter, or
- (c) a copy of any document in the charge of the Board, and the President shall comply with every such requisition without unreasonable delay.

(2) The [State Government]¹ may have any investigation made into the affairs of the Board that it may consider necessary, and may issue such direction to the Board as it deems fit.

CHAPTER VI

Staff

30. Staff of the Board.—There shall be the following staff for the Board, namely—

- (a) An Executive Officer.
- (b) A City Engineer to supervise the entire engineering operations of the Board.

1. Subs. by the A. O. 1950 for [Provl. Govt.]

(c) A Chief Accountant.

(d) Such other staff as may be required from time to time.

31. Executive Officer.—(1) The Executive Officer shall be appointed by the [State Government]¹ for a period not exceeding three years, and shall be paid such salary and allowances as the [State Government]¹ may determine.

(2) Subject to the general control of the President the entire executive power for the purpose of carrying out the provisions of this Act shall vest in the Executive Officer and all servants of the Board shall be subordinate to him.

(3) The Executive Officer shall be subordinate to the President.

32. Chief Accountant.—The Chief Accountant of the Board shall be appointed by the [State Government]¹ on such salary and allowances as the [State Government]¹ may determine.

33. Financial Adviser.—The [State Government]¹ may appoint a Financial Adviser of the Board on such salary and allowances as it may determine, and his duties and powers shall be regulated by rules framed in this behalf.

34. Medical Officer of Health.—(1) The Medical Officer of Health of the Municipal Board shall be the *ex officio* Medical Officer of Health of the Board.

(2) He shall in the first week of every month send a report to the Executive Officer of the Board regarding the general state of health within the Municipality and any area comprised in a scheme under Chapter VII, and regarding the supervision exercised by the Municipal Board in all matters relating to sanitation, conservancy and the proper ventilation of houses.

35. Power to take over certain Staff of the Trust and Municipal Board.—(1) There shall be appointed to the Board such of the existing staff of the Trust and the Municipal Board as may be considered necessary or expedient for the purposes of this Act, and every person so appointed shall be subject to the provisions of this Act and the rules and bye-laws made thereunder.

(2) All servants of the Municipal Board appointed under sub-section (1) and retained in the service of the Board shall have a lien on their posts in the event of the particular work or function being returned to the Municipal Board.

(3) The term of office of any person appointed under this section, or recruited directly under Section 30, to any post under the Board shall be limited to the life of the Board, provided that such person has not been removed, dismissed or retrenched under the provisions of this Act, and also provided that the work or function on which such person is employed is not returned to the Municipal Board.

36. Appointment of servants of the Board.—Subject to any rules or bye-laws for the time being in force the power of appointing, promoting and granting leave to servants of the Board shall vest—

- (a) in the case of servants whose monthly salary does not exceed Rs. 200, in the Executive Officer, and
- (b) in the case of servants whose monthly salary exceeds Rs. 200 but does not exceed Rs. 750, in the President, and
- (c) in all other cases in the Board :

Provided that all appointments made under clauses (a) and (b) above shall be subject to confirmation by the Board, and all appointments under clause (c), to confirmation by the [State Government]¹.

37. Punishment, retrenchment and suspension of the staff.—(1) The Executive Officer shall have the following powers in respect of the servants of the Board mentioned in clause (a) of Section 36, other than servants of the [Government]¹ on deputation to the Board, namely—

- (a) to punish by censure, fine not exceeding two month's pay, deduction, the withholding of annual increments, removal, or dismissal ;
- (b) to remove any such servant from any post as a result of retrenchment ;
- (c) to place under suspension any such servant against whom an enquiry is pending.

(2) The President of the Board shall have the following powers in respect of the servants of the Board mentioned in clause (b) of Section 36, other than servants of the [Government]¹ on deputation to the Board, namely—

- (a) to punish by censure, fine not exceeding two months' pay, reduction, the withholding of annual increments, removal or dismissal ;
- (b) to remove any such servant from any post as a result of retrenchment ;
- (c) to place under suspension any such servant against whom an enquiry is pending.

(3) In case of servants mentioned in clause (c) of Section 36, the powers of punishment as specified above, and suspension pending an enquiry, and of removing any such servant from a post as a result of retrenchment, shall vest in the Board.

(4) If the Board desires to dispense with the services of a servant of the [Government]¹ on deputation to the Board, a report shall be made to the [State Government]¹.

(5) No person shall be punished under this section until he has been given a reasonable opportunity of showing cause against the charges framed against him.

38. Appeal.—(1) An appeal shall lie from an order of punishment other than an order of censure or fine to the authority next higher to the authority that passed the order, and, in the case of original orders passed by the Board, to the [State Government]¹.

Subs by the A. O. 1950 for [Provl. Govt.].

2. *Subs.* by *ibid* for [Crown].

Provided that, if the appellate authority enhances the punishment, an appeal shall lie to the next higher authority against such order :

Provided also that in all cases the order of the [State Government]¹ shall be final.

(2) For the purpose of this section an order of suspension only shall not be deemed to be an order of punishment.

CHAPTER VII

Development Schemes

39. Definition.—A development scheme may relate to any of the matters mentioned in Section 14 or to any function of the Municipal Board taken over by the Board under Section 18.

40. Matters to be provided for in a scheme.—A scheme may provide for all or any of the following matters :

- (a) The acquisition by purchase, exchange or otherwise of any property necessary for or affected by the execution of the scheme.
- (b) The laying out of any land comprised in the scheme.
- (c) The re-distribution of sites belonging to owners of property comprised in the scheme.
- (d) The closure or demolition of dwellings or portions of dwellings unfit for human habitation.
- (e) The demolition of obstructive buildings or portions of buildings.
- (f) The construction and reconstruction of buildings.
- (g) The sale, letting, or exchange of any property, comprised in the scheme.
- (h) The construction and alteration of streets and the provision of sidewalks for pedestrians.
- (i) The drainage, water-supply, and lighting of streets so constructed or altered.
- (j) The provision of open spaces for the benefit of any area comprised in the scheme or any adjoining area and for the enlargement of existing open spaces and approaches.
- (k) The sanitary arrangements required for the area comprised in the scheme including drains, the disposal of waste and refuse and the conservation of and prevention of injury or contamination to rivers or other sources and means of water-supply.
- (l) The provision of accommodation for any class of persons.
- (m) The advance of money for the purposes of the scheme.
- (n) The provision of facilities for communications.
- (o) The reclamation or reservation of land for market, gardens afforestation, the provision of fuel and grass supply, and other needs of the population.

- (p) Any other matter for which, in the opinion of the [State Government]¹, it is expedient to make provision with a view to the development of any area.

41. Types of development schemes.—A scheme shall be of one of the following types, or may combine any two or more of such types, or of any special features thereof, namely—

- (a) a special scheme in respect of insanitary areas ;
- (b) a re-building scheme ;
- (c) a re-housing scheme ;
- (d) a street scheme ;
- (e) a deferred street scheme ;
- (f) a general scheme ;
- (g) a housing accommodation scheme ;
- (h) a town expansion scheme ;
- (i) a river training scheme ;
- (j) a transport scheme ;
- (k) a drainage and sewage disposal scheme.

42. Special scheme for insanitary areas.—Whenever it appears to the Board—

- (a) that any buildings in any area which are used or are intended or likely to be used as dwelling places are unfit for human habitation, or
 - (b) that danger to the health of the inhabitants of buildings in any area, or in any neighbouring buildings is caused by—
 - (i) the narrowness, closeness, or bad arrangement and condition of streets or buildings or groups of buildings in such area, or
 - (ii) the want of light, air, ventilation or proper conveniences in such area, or
 - (iii) any other sanitary defect in such area,
- the Board may pass a resolution to the effect that such an area is an insanitary area, and that a scheme ought to be framed in respect of such area, and may then proceed to frame such a scheme.

43. Rebuilding scheme.—(1) When it appears to the Board that any area is an insanitary area, within the meaning of the preceding section and that, regard being had to the comparative value of the buildings in such area and of the sites on which they are erected, the most satisfactory method of dealing with the area or any part thereof is a re-building scheme, it shall frame a scheme in accordance with the provisions of this section.

(2) A re-building scheme shall provide for—

- (a) the reservation of streets and open spaces and the enlargement of existing streets, and open spaces to such an extent as may be necessary for the purposes of the scheme ;

1. Subs. by the A. O. 1950 for [Provl. Govt.]

- (b) the re-laying out of the sites of the area upon such streets, or open spaces so reserved or enlarged ;
- (c) the payment of compensation in respect of any such reservation or enlargement, and the construction of the streets and open spaces so reserved or enlarged.
- (d) the demolition of the existing buildings and their appurtenances by the owners, or by the Board in default of the owners, and the erection of buildings in accordance with the scheme by the said owners or by the Board in default of the owners upon the sites as defined under the scheme ;
- (e) the advance to the owners, upon such terms and conditions as to interest and sinking fund as may be prescribed under the scheme, of such sums as may be necessary to assist them to erect new buildings in accordance with the scheme ;
- (f) the acquisition by the Board of any site of building comprised in the area included in the scheme.

44. Re-housing scheme.—The Board shall frame a re-housing scheme for the construction, maintenance and management of such and so many dwellings and shops as it may consider ought to be provided for persons who—

- (a) are displaced by the execution of any scheme sanctioned under this Act ; or
- (b) are likely to be displaced by the execution of any scheme which it is intended to frame or submit to the [State Government]¹ for sanction under this Act.

45. Street scheme.—(1) Whenever the Board is of opinion that, for the purpose of—

- (a) providing building sites, or
- (b) remedying defective ventilation, or
- (c) creating new or improving existing means of communication and facilities for traffic, or
- (d) affording better facilities for conservancy,

it is expedient to lay out new streets or alter existing streets (including bridges, causeways and culverts), the Board may pass a resolution to that effect, and shall then proceed to frame a street scheme for such area as it may think fit.

(2) A street scheme may within the limits of the area comprised in the scheme provide for—

- (a) the acquisition of any land which will, in the opinion of the Board, be necessary for its execution ;
- (b) the re-laying out of all or any of the lands so acquired, including the construction and re-construction of buildings by the Board or by any other person and the laying out, construction and alteration of streets ;

- (c) the drainage, water-supply, and lighting of streets so constructed or altered ;
- (d) the raising, lowering, or reclamation of any land vested in, or to be acquired by, the Board for the purposes of the scheme ;
- (e) the formation of open spaces for the better ventilation of the area comprised in the scheme ;
- (f) the acquisition of any land adjoining any street or open space included in the scheme.

46. Deferred street scheme.—(1) (a) Whenever the Board is of opinion that it is expedient for any purpose mentioned in Section 45 to provide for the ultimate widening of any street by altering the existing alignment of such street to improve alignments to be prescribed by the Board, but that it is not expedient immediately to acquire all or any of the properties lying within the proposed improved alignment, the Board, if satisfied of the sufficiency of its resources, may pass a resolution to that effect, and shall forthwith proceed to make a scheme to be called a "deferred street scheme" prescribing an alignment on each side of such street.

(b) No person shall erect, re-erect, add to or alter any building or wall so as to make the same project beyond the prescribed alignment of the street except with the written permission of the Board.

(2) The deferred street scheme shall provide for—

(a) the acquisition of the whole or any part of any property lying within the prescribed street alignment ;

(b) the re-laying out of all or any such property including the construction and re-construction of buildings by the Board or by any other person, and the formation and alteration of the street ;

(c) the drainage and lighting of the street so formed and altered.

(3) The owner of any property included in a deferred street scheme may, at any time after the scheme has been sanctioned by the [State Government],¹ give the Board notice requiring it to acquire such property before the expiration of six months from the date of such notice. The Board shall thereupon issue notice of its intention to acquire such property and the property shall be acquired accordingly.

(4) Before proceeding to acquire any property within the limit of the scheme other than the property regarding which it has received a notice under sub-section 3, the Board shall give six months' notice to the owner of its intention to acquire the property.

47. General scheme.—(1) In regard to any area to which this Act applies the Board may, from time to time, prepare a scheme of proposed public streets with plans showing the direction of such streets, the street alignment and building line on each side of them, their intended width and such other details as may appear desirable.

(2) When any such scheme has been notified under Section 60 the street to which it refers shall be deemed to be a projected public street.

1. Subs. by the A. O. 1950 for [Provl. Govt.]

(3) If any person desires to erect, re-erect, add to or alter any building or wall so as to make the same project beyond the street alignment or building line shown in any plan so adopted, he shall apply to the Board for permission to do so.

(4) If the Board refuses to grant permission to any person to erect on his land any building or wall to project as aforesaid, and if it does not proceed to acquire such land within one year from the date of such refusal it shall pay reasonable compensation to such person for any damage sustained by him in consequence of such refusal.

(5) When any building, wall or part thereof projecting beyond or adjacent to the street alignment or building line shown in any plan adopted as aforesaid has fallen down, or been burnt down or taken down, the Board may, by written notice, require or permit the same to be set back or forward, as the case may be, to or towards such street alignment or building line.

(6) When any building or wall is set back or forward in pursuance of a requisition made under sub-section (5), the Board shall make full compensation to the owner of the building or wall for any damage that he may sustain thereby.

(7) If the additional land, which is to be included in the premises of any person required or permitted under sub-section (5) to set forward a building, wall or part thereof, belongs to the Board, the requisition or permission of the Board to set forward the building shall have the effect of transferring the said land to the owner of the said premises, and the terms and conditions of the transfer shall be set forth in the said requisition or permission.

(8) If, when the Board requires a building, wall or part thereof to be set forward, the owner thereof is dissatisfied with any of the terms or conditions of the transfer, he may apply to the Tribunal for the modification of the said terms and conditions.

48. Housing accommodation scheme.—Whenever the Board is of opinion that it is expedient to provide housing accommodation for any class of the inhabitants of any area to which this Act is extended, the Board shall frame a "housing accommodation scheme".

49. Town expansion scheme.—(1) Whenever the Board is of opinion that it is expedient to control and provide for the future, expansion of the existing urban area in any area to which this Act applies, the Board shall frame a "town expansion scheme".

(2) Such scheme shall show the method in which it is proposed to lay out the area to be developed and the purposes for which particular areas are to be utilized.

(3) When any such scheme has been notified under Section 60, if any person desires to erect, re-erect, add to or alter any building or wall within the area comprised in the said scheme, he shall apply to the Board for permission to do so.

(4) If the Board refuses to grant permission to any person to erect, re-erect, add to or alter any building or wall on his land in the area aforesaid, and if it does not proceed to acquire such land within one year from the date of such refusal, it shall pay reasonable compensation to such person for any damage sustained by him in consequence of such refusal.

50. Initiation of schemes.—A scheme under this Chapter may be framed by the Board on its own motion, or on representation from the Municipal Board, the Cantonment Board, or the Municipal Medical Officer of Health, or in respect of a municipal ward on a written representation signed by twenty-five or more residents of such ward who are liable to pay any tax assessed upon the annual value of buildings or land under the Municipalities Act.

51. Consideration of representation.—The Board shall consider every representation made under the preceding section and shall decide whether a scheme should be framed or not and the decision of the Board shall be final.

52. Matters to be considered when framing a scheme.—When framing a scheme in respect of any area the Board shall have regard to—

- (a) the nature and conditions of the neighbouring areas and of urban area of Kanpur as a whole ;
- (b) the directions in which the expansion of the city appears likely to take place ; and
- (c) the likelihood of similar schemes being required for other parts of the town.

53. Notice of a scheme.—(1) When a scheme has been framed the Executive Officer shall prepare a notice stating —

- (a) that the scheme has been framed ;
- (b) the boundaries of the areas comprised in the scheme ;
- (c) the place at which the scheme, together with a map of the area proposed and the statement of the land which it is proposed to acquire, may be seen.

(2) The Executive Officer shall—

- (a) cause such notice to be published weekly for two consecutive weeks in the official *Gazette* and in the manner provided in Section 121 together with a statement of the period, within which objections will be received ; and
- (b) send a copy of the notice to the Chairman of the Municipal Board and the President of the Cantonment Board.

(3) The Executive Officer shall cause copies of all documents referred to in clause (c) of sub-section (1) to be delivered to an applicant on payment of such fees as may be prescribed in the bye-laws.

54. Representation of the Municipal or Cantonment Board as to a scheme.—The Chairman of the Municipal Board, or the President of the Cantonment Board, to whom a copy of the notice has been sent under clause (b) of sub-section (2) of Section 53, shall within a period of sixty days of the receipt of the said copy forward to the Board any representation which the Municipal Board or the Cantonment Board may desire to make with regard to the scheme.

55. Notice of proposed acquisition of land.—(1) Within thirty days next following the first day on which any notice is published under Section 53, in respect of any scheme, the Board shall serve a notice on—

- (a) every person whose name appears in the Municipal assessment list as being primarily liable to pay any tax assessed on the annual value of any building or land which it is proposed to acquire in executing the scheme, and
 - (b) the occupier (who need not be named) of each of the premises, entered in the municipal assessment list, which the Board proposes to acquire in executing such scheme.
- (2) Such notice shall—
- (a) state that the Board proposes to acquire such land for the purpose of carrying out a scheme, and
 - (b) require such person, if he dissents from such acquisition, to state his reasons in writing within a period of sixty days of the service of the notice.
- (3) Every such notice shall be signed by the Executive Officer of the Board.

56. Furnishing of copies or extracts from municipal assessment registers.—The Chairman of the Municipal Board shall, if required furnish the President with a copy of, or extracts from, the municipal assessment register on payment of such fees as may be prescribed by rule.

57. Abandonment or sanctioning scheme.—(1) After the expiry of the periods respectively mentioned in clause (a) of sub-section (2) of Section 53, in Section 54 and in clause (b) of sub-section (2) of Section 55 in respect of any scheme, the Board shall forthwith consider any objection or representation, received thereunder and may, after hearing all such persons making any such objection or representation as may desire to be heard, either abandon the scheme or sanction the scheme with such modifications, if any, as it may consider necessary :

Provided that in the case of a scheme of the estimated cost of over rupees ten lakhs the prior approval of the [State Government]¹ shall be obtained.

(2) Every scheme submitted to the [State Government]¹ under the proviso to sub-section (1) shall contain the following :

- (a) a description of, and full particulars relating to, the scheme, with the estimated cost of its execution and the income therefrom, if any ;
- (b) a statement of the reasons for any modification made in the scheme as originally framed ;
- (c) a statement of objections or representations, if any, received ;
- (d) a list of the names of all persons, if any, who have dissented under clause (b) of sub-section (2) of Section 55 from the proposed acquisition of their land, and a statement of the reasons given for such dissent, and
- (e) a statement of the arrangements made or proposed by the Board for the re-housing of persons likely to be displaced by the execution of the scheme and for whom rehousing provision is required.

(3) When a scheme has been submitted to the [State Government]¹

1. Subs. by the A. O. 1950 for [Prov. Govt.]

the Board shall cause notice of the fact to be published for two consecutive weeks in the *Gazette* and in the manner provided in Section 121.

58. Power of State Government to sanction, reject or return scheme.—(1) The [State Government]¹ may sanction either with or without modification or may refuse to sanction, or may return for reconsideration, any scheme submitted to it under Section 57.

(2) If a scheme which is returned for reconsideration under sub-section (1) is modified by the Board, it shall be republished in accordance with the provisions of Section 53—

- (a) in every case in which the modification affects the boundaries of the area comprised in the scheme, or involves the acquisition of any land not previously proposed to be acquired, and
- (b) in every other case, unless the modification is, in the opinion of the [State Government]¹ not of sufficient importance to require republication.

59. Procedure on a scheme, being modified by the Board.—The provisions of Section 53 shall apply *mutatis mutandis* to any scheme that the Board on its own authority is entitled to sanction, in after the consideration of objections and representations under Section 57 any modification in the original scheme is made which gives rise to the conditions mentioned in sub-section (2) of Section 58.

60. Notification of sanction for a scheme.—(1) Whenever a scheme is sanctioned, whether by the [State Government]¹ or by the Board, the fact shall be announced by notification in the official *Gazette* and it shall be incumbent on the Board, when it sanctions the scheme under its own authority, immediately to inform the [State Government]¹ of the same and to submit for the information of the [State Government]¹ the details required by sub-section (2) of Section 57.

(2) The publication of a notification under sub-section (1) in respect of a scheme shall be conclusive evidence that the scheme has been duly framed and sanctioned, and shall be sufficient authority for the Board to execute the scheme.

61. Alteration of a scheme after sanction.—At any time after a scheme has been sanctioned either by the [State Government]¹ or by the Board and before it has been completed, the Board may alter it, provided that—

- (a) in the case of a scheme sanctioned by the [State Government]¹ if an alteration is estimated to increase the estimated net cost of executing the scheme by more than rupees one lakh, such alteration shall not be made, without the previous sanction of the [State Government]¹;
- (b) in the case of a scheme sanctioned by the Board on its own authority, the alteration shall be sent to the [State Government]¹ for information ;
- (c) if any alteration involves the acquisition, otherwise than by agreement, of any land the acquisition of which has not already been authorized by law, the procedure, prescribed

in the foregoing sections of this Chapter shall, so far as applicable, be followed as if the alteration were a separate scheme.

62. Progress report in regard to schemes.—The Board shall at the close of every half financial year submit to the [State Government]¹ a list of all the schemes sanctioned under this Chapter showing the progress made with each scheme, and the form in and the date by which such list is to be submitted shall be prescribed by rule.

CHAPTER VIII

Powers and duties of the Board, where a Scheme has been sanctioned

63. Effect of transfer.—Whenever any building or movable property vested in the Municipal Board and used specifically for the purposes of the Municipal Board is required for the execution of any scheme, the Executive Officer shall give notice to the Chairman of the Municipal Board, and thereupon the said building or other movable property shall vest in the Board, subject to the payment of such compensation as may be necessary to compensate the Municipal Board for any actual loss or damage sustained :

Provided that in the event of any dispute regarding the adequacy of the compensation, the matter shall be referred to the [State Government]¹ whose decision shall be final.

64. Transfer of private street to the Board for purposes of a scheme.—(1) Whenever any street or part thereof which is not vested in the Municipal Board is required for executing any scheme, the Executive Officer shall cause to be affixed, in a conspicuous place in or near such street, or part, a notice signed by the President—

- (a) stating the purpose for which the street or part is required, and
- (b) declaring that the Board will, on or after a date to be specified in the notice, such date being not less than thirty days after the date of the notice, take over charge of such street, or part, from the owner thereof.

(2) The Executive Officer of the Board shall simultaneously send a copy of such notice to the owner of such street, or part thereof.

(3) After considering and deciding all objections, if any, received in writing before the date so specified, the Board may take over such street, or part, from the owner thereof; and the same shall thereupon vest in the Board.

(4) When the Board alters or closes any street or part thereof, which has vested in it under sub-section (3), it shall pay reasonable compensation to the previous owner for the loss of his rights therein.

(5) If the alteration or closing of such street, or part, causes damage or substantial inconvenience to owner of property adjacent thereto, or to residents in the neighbourhood, the Board—

- (i) shall forthwith provide some other reasonable means of access for the use of persons who were entitled to use such

1. Subs. by the A. O. 1950 for [Prov. Govt.]

street, or part, as a means of access to any property or place, and

- (ii) if the provision of such means of access does not sufficiently compensate any such owner or resident for such damage or inconvenience, shall also pay him reasonable compensation in money.

65. Power of Board to turn or close public street vested in it.—(1) The Board may turn, divert, discontinue the public use of, or permanently close any public street vested in it, or any part thereof.

(2) Whenever the Board discontinues the public use of, or permanently closes any public street vested in it, or any part thereof, it shall pay reasonable compensation to any person who was entitled, otherwise than as a mere licensee, to use such street or part as a means of access and has suffered damage from such discontinuance or closure.

(3) In determining the compensation payable to any person under sub-section (2), the Board shall make allowance for any benefit accruing to him from the construction, provision or development of any other public street at or about the same time that the public street or part thereof, on account of which the compensation is paid, is discontinued or closed.

(4) When any public street vested in the Board, or any part thereof, is permanently closed under sub-section (1), the Board may sell or lease so much of the same as is no longer required.

66. Power of Board for facilitating movement of the population.—With a view to facilitating the movement of the population in and around any area to which this Act is applied, the Board may from time to time,—

(1) subject to any conditions it may think fit to impose,—

(a) guarantee the payment, from the funds at its disposal, of such sums as it may think fit, by way of interest on capital expended on the construction, maintenance or working of means of locomotion, or

(b) make such payments as it may think fit from the said funds, by way of subsidy to persons undertaking to provide, maintain and work any means of locomotion, or

(2) either singly or in combination with any other persons construct, maintain and work any means of locomotion, under the provisions of any law applicable thereto, or

(3) construct, or widen, strengthen or otherwise improve bridges :

Provided that no guarantee or subsidy shall be made under sub-section (1), and no means of locomotion shall be constructed, maintained and worked under sub-section (2), without the sanction of the [State Government]¹.

67. Power to make surveys or contribute towards their cost.—The Board may—

1. Subs. by the A. O. 1950 for [Provl. Govt.]

- (a) cause a survey of any land to be made, whenever it considers that a survey is necessary for carrying out any of the purposes of this Act, or
- (b) contribute towards the cost of any such survey made by the Municipal Board.

68. Power of entry.—(1) The President may, with or without assistants or workmen, enter into or upon any land, in order—

- (a) to make any inspection, survey, measurement, valuation or inquiry,
- (b) to take levels,
- (c) to dig or bore into the sub-soil,
- (d) to set out boundaries and intended lines of work,
- (e) to mark such levels, boundaries and lines by marks and cutting trenches, or
- (f) to do any other thing.

whenever it is necessary to do so for any of the purposes of this Act or any rule or bye-law made or scheme sanctioned hereunder:

Provided as follows:

- (a) no such entry shall be made between sunset and sunrise;
- (b) no building which is used as a human dwelling shall be entered, unless with the consent of the occupier thereof, without giving the said occupier at least twenty-four hours previous written notice of the intended entry;
- (c) sufficient notice shall in every instance be given to enable the inmates of any apartment appropriated to females to remove to some part of the premises where their privacy may not be disturbed;
- (d) due regard shall always be had, so far as may be compatible with the exigencies of the purpose for which the entry is made, to the social and religious usages of the occupants of the premises entered.

(2) Whenever the President enters into or upon any land in pursuance of sub-section (1), the Board shall pay for any damage that may be caused.

(3) The President may make an entry for the purpose of inspection or search and may open or cause to be opened a door, gate or other barrier—

- (a) if he considers the opening thereof necessary for the purpose of such entry, inspection or search, and
- (b) if the owner or occupier is absent, or being present, refuses to open such door or gate or barrier.

69. Reference to Tribunal in certain cases.—A person aggrieved at the sufficiency of the compensation offered under Sections 43, 47, 49, 64, 65 and 68 may apply to the Tribunal for the reconsideration and reassessment of such compensation.

CHAPTER IX

Acquisition and Disposal of Land

70. Power to purchase or to lease by agreement.—The Board may enter into an agreement with any person for the purchase, leasing or exchange by the Board of any land of any interest in such land which the Board is authorized to acquire.

71. Power to acquire land under the Land Acquisition Act, 1894.—The Board may, with the previous sanction of the [State Government]¹ acquire land under the provisions of the Land Acquisition Act, 1894, as modified by the provisions of this Act, for the carrying out of any of the purposes of this Act.

(2) (a) In any case in which the [State Government]¹ has sanctioned an acquisition of land, in any area comprised in an improvement scheme, which is not required for the execution of the scheme, the owner of the land, or any person having an interest therein, may at any time before the land is acquired make an application to the Board, requesting that the acquisition of the land should be abandoned in consideration of the payment by him of a sum to be fixed by the Board in that behalf.

(b) If an application made under clause (a) of sub-section (2) is accepted by the Board, it shall proceed to fix the sum, in consideration of which the acquisition of the land may be abandoned, and shall also fix the terms and conditions to be observed by the applicant.

(c) After the sum and the terms and conditions mentioned in clause (b) have been fixed by the Board and accepted by the applicant, all land acquisition proceedings in respect of such land shall be quashed, and no betterment tax shall be levied.

(d) If the applicant at any time does not comply with the terms and conditions fixed under clause (b) the Board may acquire the land and the money, if any, paid by the applicant shall be refunded to him without any interest.

72. Power to dispose of land—Subject to the rules made under this Act the Board may retain, lease, sell, exchange or otherwise dispose of any land vested in or acquired by it under this Act.

CHAPTER X

Finance and Taxation

73. Definition of Board as Local Authority.—(1) The Board shall be deemed to be a local authority as defined in the Local Authorities Loans Act, 1914², and shall be subject to all its provisions and the rules thereunder, for the purpose of borrowing money under that Act.

(2) The making and execution of any scheme under this Act shall be deemed to be a work which such local authority is legally authorised to carry out.

74. Loans.—For the sake of removal of doubt it is hereby provided that the Board shall be entitled to raise loans in the open market by the issue of debentures, with the prior sanction of the [State Government]¹

1. Subs. by the A. O. 1950 for [Provl. Govt.]

2. U. C. A., Vol., XI, p. 17.

and subject to rules prescribed in this behalf, particularly in regard to the date of the floatation of the proposed loan, its amount, and the date of repayment:

Provided that no such sanction shall be given to the Board for the borrowing of money on the security of property subject to a prior encumbrance.

75. Diversion of borrowed money to purposes other than those first approved.—When any sum of money has been borrowed under the preceding sections for the purpose of meeting a particular expenditure, or of repaying a particular loan, no portion thereof shall be applied to any other purpose.

76. Utilization of loans.—Loans shall be utilized for the following purposes, namely—

(a) for meeting expenditure debitable to the capital account as hereinafter defined, and

(b) for the repayment of any loan taken under this Act.

77. Debenture.—(1) All debentures issued by the Board shall be in such form as the Board, with the sanction of the [State Government]¹ may from time to time determine.

(2) Every debenture shall be signed by the President and one other member of the Board.

78. Signature on coupons attached to debentures.—All coupons which may be attached to debentures issued under this Act shall bear the signature of the President and such signature may be engraved, lithographed, or impressed by any mechanical process.

79. Right of debenture holders.—The rights and liabilities of the holder of a debenture shall be governed by the law for the time being in force in respect of debentures issued under this Act.

80. Priority of payments for interest and repayment of loans.—All payments due from the Board for interest on or the repayment of loans shall be made in priority to all other payments from the Board except such as may be due to the [State Government]¹.

81. Repayment of loans.—All loans taken by the Board shall be repaid in the manner provided for in the Local Authorities Loans Rules, 1915.

82. Custody and investment of funds.—All moneys at the credit of the Board shall be kept in the Imperial Bank of India, Kanpur Branch, provided that nothing in this section shall preclude the Board from investing with the previous sanction of the [State Government]¹, any such moneys which are not required for immediate expenditure in any of the securities mentioned in Section 20 of the Indian Trusts Act, 1882, or from investing in or subscribing to the shares of any Transport concern operating within the limits of the Board.

83. Procedure if the Board fails to make any payment in respect of a loan.—(1) If the Board fails to re-pay any loan taken from the Government in pursuance of the foregoing provisions, or any

1. Subs. by the A. O. 1950 for [Provl. Govt.]

interest or costs in respect thereof according to the conditions of a loan, the [State Government]¹ shall instruct the Accountant General of [Uttar Pradesh]², if it considers necessary to make such payment, and shall immediately recover the amount paid by attachment of the rents and other income of the Board.

(2) If the Board fails to repay any loan raised in the open market under Section 74 or any interest or costs in respect thereof, according to the conditions of the loan, the fact of such failure shall be reported by the Board, and may be reported by any creditor, to the [State Government]¹, who shall thereupon recover the amount due by attachment of the rents and other income of the Board and shall pay the same to the creditor through the Imperial Bank of India, Kanpur Branch, in such manner as may be prescribed in the rules.

(3) The provisions of Section 5 of the Local Authorities Loans Act, 1914, shall with any necessary modifications be applied to action under this section.

84. Recurring charges.—All recurring expenditure on the upkeep and maintenance of works taken over by the Board, and all interest and sinking fund charges on loans relating to any of the works or operations mentioned in Sections 14 and 19 of this Act, and incurred by the Municipal Board prior to the coming into force of this Act, shall be allocated between the Municipal Board and the Board and shall be paid in such instalments as may be fixed by agreement :

Provided that in the event of any disagreement a reference shall be made by one or the other party or both to the [State Government]¹ whose decision shall be final.

85. Examination of Municipal finances.—The [State Government]¹ may appoint an officer in the service of the [Government]³ to examine the financial position of the Municipal Board, with particular reference to the basis of assessment of the house-tax, the rental valuation of buildings, and the adequacy of the water tax, and such officer shall submit his report to the [State Government]¹.

86. Orders of Government after examination of the Municipal Board's finances.—The Municipal Board shall carry out the orders of the [State Government]³, if any, on such report within such period as may be specified.

87. Waterworks income.—(1) All taxes and charges in respect of water-supply collected by the Municipal Board under sub-section (1) of Section 15 shall be handed over by the Municipal Board to the Board in such manner as may be agreed upon between them.

(2) The Board shall after defraying all charges in respect of the duties imposed by clause (a) of Section 14 and after providing for all sinking fund and interest charges in respect of loans for water-supply, hand over the surplus, if any, to the Municipal Board.

(3) If the charges and expenses incurred by the Board in carrying out the duties imposed by clause (a) of Section 14 and providing for all sinking fund and interest charges in respect of loans for water-

1. Subs. by the A. O. 1950 for [Provl. Govt.]

2. Subs. by *ibid* for [the United Provinces.]

3. Subs. by *ibid* for [Crown.]

supply exceed the taxes and charges in respect of water-supply collected by the Municipal Board under sub-section (1) of Section 15, the Municipal Board shall pay the deficient amount to the Board in such manner as may be agreed upon between them.

(4) In the event of any disagreement between the Municipal Board and the Board in respect of any matter under this section, a reference shall be made by one or the other party or by both to the [State Government]¹ whose decision shall be final.

88. Keeping of capital and revenue accounts.—The Board shall keep a capital account and a revenue account.

89. Credits to capital account.—There shall be credited to the capital account—

- (a) All moneys received on account of loans taken or debentures issued by the Board in pursuance of Section 73 or Section 74 respectively.
- (b) The proceeds of the sale of any land vested in the Board which was purchased out of any loan taken or debenture issued in pursuance of Section 73 or Section 74 respectively.
- (c) Where land was purchased out of an advance from the revenue account, the portion of the proceeds of the sale of such land which remains after crediting to the revenue account the amount of such advance.
- (d) The proceeds of the sale of any movable property (including securities purchased from the capital account).
- (e) All sums that may be received from the Government in aid of the capital account.
- (f) All premia received by the Board in connexion with leases, for any term exceeding thirty years, and the proceeds of betterment tax under Section 104 and sub-section (2) of Section 105.
- (g) Payments relating to a sinking fund.
- (h) All sums which the [State Government]¹ may from time to time direct.

90. Application of capital account.—(1) The moneys credited to the capital account shall be applied to—

- (a) meeting all costs of framing and executing a scheme under Section 14 or Section 19;
- (b) meeting the cost of acquiring land for carrying out any of the purposes of this Act;
- (c) meeting the cost of constructing buildings and other works required for carrying out any of the purposes of this Act;
- (d) the repayment of loans;
- (e) making payments, otherwise than for interest on, or for expenses of maintaining or working any system of transport or locomotion mentioned in clause (g) of Section 14 or in Section 66;

1. Subs. by the A. O. 1950 for [Provl. Govt.]

- (f) making, or contributing towards the cost of making surveys under Section 67 ;
- (g) making such proportion of the cost of management as the Board may, with the sanction of the [State Government]¹, prescribe in this behalf ; and
- (h) temporarily making good the deficit (if any) in the revenue account at the end of any financial year.

(2) The capital account shall show separately the expenditure incurred by the Board on each scheme.

91. Credits to revenue account.—There shall be credited to the revenue account—

- (a) all interest received except the interest on a sinking fund ;
- (b) all proceeds received by the Board from betterment tax under sub-section (1) of Section 105, and from the enhancement of stamp duty ;
- (c) all sums contributed from the funds of the Municipal Board under Section 84 ;
- (d) all sums received by way of damages or fines under this Act or any rule or bye-law framed thereunder ;
- (e) all recurring sums received from the Government in aid of the Revenue Account of the Board ;
- (f) all premia received by the Board for leases for a term not exceeding thirty years ;
- (g) all rents of land and buildings vested in the Board ; and
- (h) all other receipts by the Board which are not required by Section 89 to be credited to the capital account.

92. Application of revenue account.—(1) The moneys credited to the revenue account shall be applied to—

- (a) meeting all charges for interest and sinking fund due on account of any loan taken or debenture issued in pursuance of Section 73 or Section 74 respectively, or any loan taken by the Improvement Trust or any loan relating to any work taken over by the Board from the Municipal Board and all other charges incurred in connexion with such loan or issue of debentures ;
- (b) paying the cost, if any, of the establishment required by the Board for the purposes of this Act ;
- (c) paying of sums which may have to be paid to an auditor ;
- (d) making payments in pursuance of Section 66 for interest or for expenses of maintenance or working of any means of locomotion referred to therein ;
- (e) paying the cost of management after excluding such portion thereof as may be debited to the capital account under clause (g) of Section 90 ;
- (f) paying of other sums due from the Board, other than those which are required by Section 90 to be paid from the capital account.

(2) The surplus, if any, remaining after the payments referred to in sub-section (1) may be dealt with in the manner prescribed by the proviso to Section 82.

93. Power to direct sale of securities in which any surplus of the revenue account is invested.—After any moneys have been invested under the proviso to Section 82, the Board may, with the sanction of the [State Government]¹, sell such securities.

94. Advances from revenue account to capital account.—(1) Notwithstanding anything contained in Section 92 the Board may advance any sum standing at the credit of the revenue account for meeting capital expenditure.

(2) Every such advance shall be refunded to the revenue account as soon as practicable.

95. Advances from capital account to revenue account.—(1) Any deficit in the revenue account at the end of any financial year may be made good by an advance from the capital account.

(2) Every such advance shall be refunded to the capital account in the following financial year.

96. Submission of abstract of accounts to State Government.—The Board shall submit to the [State Government]¹ at the end of each half of every financial year, an abstract of the accounts of receipts and expenditure.

97. Annual audit.—The accounts of the Board shall be examined and audited by such auditors as may be appointed by the [State Government]¹.

98. Powers and procedure of auditor.—The powers of, and the procedure to be followed by, the auditor so appointed shall be laid down in the rules.

99. Test audit.—The [State Government]¹ may in addition to the provisions of Section 97 order a test audit to be made by the Examiner, Local Fund Accounts, who shall be paid such fee as the [State Government]¹ may direct.

100. Definition of betterment tax.—Betterment tax means tax to be charged on the increase in the value of any land comprised in the scheme, but not actually required for the execution thereof, or on the increase in the value of any land that is adjacent to and within one quarter of a mile of the boundaries of such scheme, provided that such adjacent land is situated within the area to which this Act applies.

101. Amount of betterment tax.—The betterment tax shall be an amount equal to one-half of the difference between the market value of the land on the date of the resolution passed by the Board under Section 103 and the market value of such land on or immediately before the date on which the scheme was finally notified under Section 60 :

Provided that for the purposes of the calculation in this section the land shall be treated as free of all buildings.

1. Subs. by the A. O. 1950 for [Provl. Govt.]

102. Liability to pay tax.—Every owner of land mentioned in Section 100, or any person having an interest therein in respect of the increase in the value of such land, shall in the manner hereinafter provided, pay to the Board such betterment tax as may be determined by the Executive Officer.

103. Public notice of betterment tax.—(1) The [State Government]¹ shall after consulting the Board, declare by notification in the official *Gazette* the date on which a scheme shall be deemed to have been completed.

(2) When it appears to the Board that a scheme is sufficiently advanced to enable the amount of the betterment tax to be determined, the Board may by a resolution declare that a betterment tax shall be levied from a specified date and shall thereupon give public notice as prescribed in Section 121 that a betterment tax shall be levied from such date, provided that the Board shall not pass the resolution later than the date of the notification specified in sub-section (1).

104. Assessment of betterment tax and filing of objections.—(1) The Executive Officer shall at any time after one month from the publication of such notice, assess the amount of betterment tax payable by the person concerned, and shall give a notice in writing to such person stating the amount of the tax, the instalments, if any, in which, and the dates on which, the tax shall be paid together with such other particulars as may be necessary.

(2) Any person on whom a notice of assessment is served under sub-section (1) may within one month from the date of the service of such notice file an objection against such assessment before the Executive Officer :

Provided that the objection may be entertained even after the expiry of the period mentioned in this sub-section if the President is satisfied that the failure to file objections was due to causes beyond the control of the objector.

(3) After an opportunity has been given to the objector of being heard, the President shall decide the objection, and may confirm, modify, or cancel the assessment.

(4) Any person aggrieved by the order of the President under sub-section (3) may within one month from the date of such order apply to the Tribunal for the reconsideration of the order, and subject to the decision of the Tribunal the order of the President shall be conclusive.

(5) If the person on whom a notice of assessment is served under sub-section (1) fails to file any objection under sub-section (2), the order of assessment shall be conclusive and shall not be questioned in the Tribunal or any other court of law.

105. Agreement to make payment of betterment tax an annual charge on land.—(1) A person liable to pay betterment tax may, at his option instead of making a payment thereof to the Board execute an agreement with the Board to leave the said payment outstanding as a charge on his interest in the land, subject to the payment in perpetuity of interest at the rate of 6 per cent per annum.

(2) A person who has exercised his option under sub-section (1)

may at any time, subject to his giving six months' notice of his intention, pay the amount of betterment tax assessed under Section 104.

106. Realization of betterment tax.—Areas of betterment tax shall be realized in the manner provided in Chapter VI of the Municipalities Act.

107. Duty on certain transfers of immovable property.—

(1) The duty imposed by the Indian Stamp Act, 1899, on any deed of transfer of immovable property shall in the case of immovable property situated within the area to which this Act applies be increased by 2 per cent on the value of the property transferred or in the case of a usufructuary mortgage on the amount secured by the instrument.

(2) All collections resulting from the said increase shall, after the deduction of incidental expenses, if any, be paid to the Board by the [State Government]¹ in such manner as may be prescribed by the rules.

(3) For the purposes of this section, Section 27 of the Indian Stamp Act, 1899, shall be read as if it specifically required the particulars referred to therein to be separately set forth in respect of—

- (a) property situated within the area notified, and
- (b) property situated outside such area.

(4) For the purposes of this section, Section 64 of the Indian Stamp Act, 1899, shall be read as if it referred to the Board as well as to Government.

CHAPTER XI

Tribunal

108. Tribunal to be constituted.—(1) A Tribunal shall be constituted by the [State Government]¹ with the powers and duties specified in this Chapter.

(2) The Tribunal constituted under Section 57 of the United Provinces Town Improvement Act, 1919, shall from the date of the commencement of this Act be dissolved.

(3) All suits and proceedings pending before the Tribunal constituted under the United Provinces Town Improvement Act, 1919, shall be tried and proceeded with by the Tribunal constituted under sub-section (1) as if they had been filed before such Tribunal and the provisions of the Act and any rules made thereunder shall apply to all such suits and proceedings.

109. Duties of Tribunal.—The Tribunal shall—

- (a) preform the functions of the court with reference to the acquisition of land for the Board under the Land Acquisition Act, 1894 :

Provided that no such claim shall be entertained by the Tribunal, unless the claimant has deposited in court such sum, not exceeding Rs. 7,000, as the Tribunal may fix as security for the costs, which in the event of the claimant's failure may be awarded against him ;

1. Subs. by the A. O. 1950 for [Prov. Govt.]

- (b) decide disputes relating to betterment tax under Section 194 ;
- (c) decide disputes referred to it under Sections 43, 47, 49, 64, 65, 68, 148 and 149.

110. Personnel of Tribunal.—(1) The Tribunal shall consist of a Chairman and two assessors.

(2) The Chairman shall be either an officer of the Indian Civil Service of not less than five years' standing as a District Judge or an officer of [Uttar Pradesh]² Civil Services (Judicial Branch) of not less than 15 years' standing :

Provided that no person shall be eligible for appointment as an assessor of the Tribunal if he is a member of the Board, or would, if he were a member, be liable to removal under Section 11.

(3) The Chairman of the Tribunal and the assessors shall be appointed by the [State Government]¹.

(4) The term of office of the Chairman shall be for such period as the [State Government]¹ may from time to time appoint in this behalf and the term of office of each assessor shall be for a period not exceeding three years :

Provided that no assessor, who has become liable to the proviso to sub-section (2), shall be eligible for re-appointment.

(5) The [State Government]¹ may remove the Chairman or an assessor from the Tribunal on the ground of incapacity or misbehaviour or for any other reason that the [State Government]¹ considers sufficient.

(6) If the Chairman or an assessor of the Tribunal is absent for three months or more on account of illness or any other cause the [State Government]¹ shall appoint another person in his place.

111. Remuneration.—The Chairman and each assessor of the Tribunal shall receive such remuneration, if any, as the [State Government]¹ may prescribe.

112. Staff of Tribunal.—(1) The Chairman of the Tribunal shall from time to time prepare a statement showing—

- (a) the number and grades of the members of the staff necessary for the Tribunal ;
- (b) the salary to be paid to each member of the staff.

(2) The terms and conditions of service of the members of the staff of the Tribunal shall be determined by the Chairman.

113. Disbursement of remuneration of Chairman and assessors, and pay of staff.—The remuneration prescribed under Section 111 for the Chairman and each assessor of the Tribunal, and the salaries, leave allowances and acting allowances prescribed for the members of the staff of the Tribunal shall be paid by the Board to the Chairman of the Tribunal for distribution.

114. Modification of the Land Acquisition Act, 1894.—For the purpose of the acquisition of land for the Board under the Land Acquisition Act, 1894—

1. Subs. by the A. O. 1950 for [Prov]. Govt.]

2. Subs. by *ibid* for [the United Provinces].

- (a) the said Act shall be subject to the modifications specified in the Schedule to this Act ;
- (b) the award of the Tribunal shall be deemed to be the award of the court under the Land Acquisition Act, 1894.

115. Law applicable to the Tribunal.—In so far as they are not inconsistent with the provisions of this Act the provisions of the Code of Civil Procedure, 1908, and the Indian Evidence Act, 1872, and any other law for the time being in force, shall apply to all proceedings under this Chapter.

116. Powers of Chairman.—In the hearing and decision of disputes under this Chapter—

- (a) if there is any disagreement between the Chairman and the assessors of the Tribunal on a point of fact, the opinion of the majority shall prevail, and
- (b) if there is any disagreement between the Chairman and the assessors of the Tribunal on a point of law or procedure, the assessors shall be bound by the opinion of the Chairman.

117. Powers of Chairman. Decision of Tribunal to be final.—Subject to the provisions of Section 119 the decision of the Tribunal shall be final, and shall not be questioned in any court of law.

118. Enforcement of orders of the Tribunal.—Every order made by the Tribunal for the payment of money shall be enforced, on application, by the Court of Small Causes, Kanpur, as if it were a decree of that court.

119. Appeals.—(1) An Appeal to the High Court shall lie from a decision of the Tribunal if—

- (a) the Chairman of the Tribunal grants a certificate that the case is a fit one for appeal, or
- (b) the High Court grants special leave to appeal, provided that the High Court shall not grant such special leave unless the Chairman of the Tribunal has refused to grant a certificate under clause (a).

(2) An appeal under sub-section (1) shall lie only on one or more of the following grounds, namely—

- (i) the decision being contrary to law or to some usage having the force of law ;
- (ii) the decision having failed to determine some material issue of law or usage having the force of law ;
- (iii) a substantial error or defect which may have produced an error or defect in the decision of the case upon merits either on a point of fact or of law.

(3) Notwithstanding anything contained in the foregoing provisions, no appeal shall lie under this section unless the appellant has deposited the money which he is liable to pay under the order from which the appeal is filed.

(4) Subject to the provisions of sub-section (1), the provisions of the Code of Civil Procedure, 1908, with respect to appeals from original decrees, shall, so far as may be, apply to appeals under this Act.

(5) An appeal under sub-section (1) shall be deemed to be an appeal under the Code of Civil Procedure, 1908, within the meaning of Article 156 of the First Schedule to the Indian Limitation Act, 1908.

(6) An order passed by the High Court on appeal under this Act shall be enforced on application, by the Court of Small Causes, Kanpur, as if it were a decree of that court.

120. Power to make rules.—The [State Government] may frame rules not repugnant to the Code of Civil Procedure, 1908, for the conduct of the business of the Tribunal, and such rules shall be published by notification in the official *Gazette*.

CHAPTER XII

Procedure and Penalties

121. Method of giving public notice.—Subject to the provisions of this Act every public notice required by this Act shall be deemed to have been given—

(a) if it is published in three newspapers, each with a local circulation to be prescribed by the Board, one such newspaper being published in English, one in Hindi and the third in Urdu, and

(b) if it is also posted upon a notice board at the office of the Board.

122. Personal service of notice or bill.—(1) Every notice or bill which required under this Act or rules or bye-laws made thereunder to bear the signature of the President or any officer of the Board, shall be deemed to be properly signed if it bears a facsimile of the signature of the President or of such other officer as the case may be stamped thereupon.

(2) Every notice other than a public notice, and every bill, issued by the Board under this Act, shall, unless it is otherwise provided, be served or presented in duplicate and the person concerned shall take one part and sign the counterpart thereof.

123. Substituted service.—(1) If the person to whom a notice is given or a bill is presented under Section 122 refuses or evades acceptance of the same, the notice or bill shall be sent by post under a certificate of posting, and such certificate shall be deemed to be conclusive proof of the service or presentation.

(2) If such person is not found or is a *pardanashin* woman then the notice or bill shall be left at the last named place of abode, if within the area to which this Act applies, or shall be given to some adult male member of the family, or shall be affixed on some conspicuous part of the building or land to which it relates.

(3) If the address of such person is unknown or is uncertain, then the notice or bill shall be published in the manner provided in Section 121.

(4) If the person on whom a notice is to be given or bill to be presented is a minor, service upon the guardian or upon an adult male member of the family shall be deemed to be service upon the minor.

124. Powers of Board to execute a work on failure to comply with notice.—If a notice has been given under this Act to a person requiring him to execute a work in respect of any property, or to provide or do anything within a time specified in the notice, and if such person fails to comply with such notice the Board may cause such work to be executed or such thing to be provided or done and may recover the cost thereof.

125. Liability of occupier to pay in default of owner.—(1) If the person to whom the notice mentioned in Section 124 has been given is the owner of the property, the Board may (whether any action or other proceeding has been brought or taken against such owner or not) require the person (if any) who occupies such property or part thereof under such owner, to pay to the Board, instead of to the owner, the rent payable by him in respect of such property, as it falls due, up to the amount recoverable from the owner under Section 124, and any such payment made by the occupier to the Board, shall, notwithstanding any contract between the owner and the occupier to the contrary, be deemed to have been made to the owner of the property.

(2) For the purpose of deciding whether action should be taken under sub-section (1) the Board may require an occupier of property to furnish such information as may be necessary; and, if the occupier refuses to furnish such information, he shall be liable for the whole of the expenses as if he were the owner.

(3) All money recoverable by the Board under Sections 124 and 125 shall be recoverable in the manner provided by Chapter VI of the Municipalities Act.

126. Right of occupier to execute works in default of owner.—Whenever default is made by the owner of a building or land in the execution of a work required under this Act to be executed by him the occupier of such building or land may, with the approval of the Board, cause such work to be executed and the expense thereof shall, in the absence of any contract to the contrary, be paid to him by the owner, or the amount may be deducted out of the rent as it falls due.

127. Procedure upon opposition to execution by occupier.—

(1) If the occupier of any building or land refuses to allow the owner to comply with an order of the Board, the owner may make a report to the City Magistrate, Kanpur.

(2) The Magistrate, after hearing the parties and taking such evidence as may be produced before him, may make an order in writing requiring the occupier to allow the owner to comply with the orders of the Board, and may also, if he thinks fit, order the occupier to pay to the owner the cost of the proceedings following the report.

(3) If, after the expiry of eight days from the date of the Magistrate's order, the occupier continues to refuse to allow the owner to comply with the order, the occupier shall be liable upon conviction by the Magistrate referred to in sub-section (1) to a fine which may extend to Rs. 50 for every day during which he has so continued or continues to refuse.

(4) Every owner, during the continuance of such refusal, shall be discharged from any penalties to which he might otherwise have become liable by reason of his default in complying with the order of the Board.

128. Recovery of cost of work by the occupier.—When the occupier of a building or land has, in compliance with a notice issued under this Act, executed a work for which the owner of such building or land is responsible either in pursuance of the contract of tenancy or by law, he shall in the absence of any contract to the contrary be entitled to recover from the owner by deduction from the rent payable by him the reasonable cost of such work.

129. Recovery of expenses of removal by Board.—The expenses incurred by the Board in effecting any removal under Section 265 of the Municipalities Act as applied by Section 17 of this Act or in the event of a written notice under Section 278 of the Municipalities Act not being complied with under Section 124 of this Act, shall be recoverable by sale of the materials removed, and if the proceeds of such sale do not suffice, the balance shall be recoverable from the owner of the said materials in the manner provided by Chapter VI of the Municipalities Act.

130. Relief to agents and trustees.—(1) No agent of the owner or occupier of any land or building shall be bound to discharge any obligation imposed by this Act, unless he has in his custody or power sufficient funds belonging to such owner or occupier to enable him to discharge the obligation, provided that the agent has given prior information to the Board of his inability to discharge any such obligation.

(2) On receipt of such information the Board may give him notice to apply to the discharge of such obligation as aforesaid the first moneys which come to his hands on behalf of or for the use of the owner or occupier, and should he fail to comply with such notice he shall be deemed to be personally liable to discharge such obligation.

131. Application of Chapter VI of Municipalities Act.—Whenever in this Act it is provided that any sum shall be recoverable in the manner provided by Chapter VI of the Municipalities Act, then in applying the provisions of that Chapter all references to the Municipal Board shall be construed as referring to the Board and all references to the Municipal office, a municipal officer or the municipal fund shall be construed as referring to the office of the Board, to an officer of the Board and the funds of the Board respectively.

132. Penalty for removing fence, etc. in street.—If any person without lawful authority—

(a) removes any fence, or any timber used by the Board for propping or supporting any building, wall or other thing, or extinguishes any light set up at any place where the surface of a street or other ground has been opened or broken up by the Board for the purpose of carrying out any work, or

(b) infringes any order given, or removes any bar, chain or post fixed by the Board for the purpose of closing any street, to traffic ;

he shall be punished on conviction by a magistrate with fine, which may extend to Rs. 100.

133. Power to prevent the construction of or to order demolition of a building in contravention of Sections 46, 47 and 49.—If any person without the permission of the Board erects, re-erects, adds to or alters any building or wall so as to make the same project beyond the street alignment prescribed under Section 46 or the street alignment or building line shown in any plan finally adopted by the Board under Section 47, or erects, re-erects, adds to or alters any buildings or wall in the area specified in sub-section (3) of Section 49, the President may by a written notice,—

- (a) direct that the building, alteration or addition be stopped, and
- (b) require such building, alteration or addition to be altered or demolished as he may deem necessary.

134. Penalty for obstructing contractor or removing mark.—Any person who—

- (a) obstructs or molests any person, with whom the Board has entered into a contract, in the performance or execution of the contract, or
- (b) removes any mark set up for the purpose of indicating any level or direction necessary for the execution of a work authorized under this Act,

shall be punished on conviction by a magistrate with a fine which may extend to 500 rupees, or with imprisonment for a term which may extend to two months, or both.

135. Penalty for failure to do anything or refrain from doing anything under the Act, or a notice thereunder.—Where under this Act or a notice issued thereunder any person is required to do or to refrain from doing anything, the person, who fails to comply with such requisition shall, if such failure is not an offence punishable under any other section, be liable on conviction to a fine not exceeding Rs. 500 for every such failure and in case of a continued breach to a further fine which may extend to Rs. 50 for every day after the date of the first conviction during which the offender is proved to have persisted in the breach.

136. Dues to be recoverable as arrears of land revenue.—In addition to any other method prescribed by this Act or any other Act for the time being in force, any money due to the Board under this Act may be recovered as arrears of land revenue on application to the Collector of Kanpur District, provided that the Collector shall not be bound to take action under this section unless he is satisfied that such action is necessary.

137. Offence to be bailable.—(1) Every offence under this Chapter shall be bailable, and except as otherwise provided, shall be non-cognizable.

(2) Offences under this Chapter shall be tried by a magistrate not inferior to a magistrate of a second class, to be appointed by the District Magistrate, Kanpur, in this behalf.

(3) The provisions of the Code of Criminal Procedure, 1898, shall so far as is practicable, apply to the trial of such offences.

138. Fines to be credited to the Board.—All sums recovered by way of fines for any offence under this Act, or any rule or bye-law made thereunder, shall be handed over to the Board by the [State Government]¹

139. Authority for prosecutions.—Unless otherwise expressly provided, no court shall take cognizance of any offence under this Act, except on the complaint of, or upon information received from, the Board or some person authorized by the Board by general or special order in this behalf.

● CHAPTER XIII

Supplemental provisions

140. Members and servants of the Board, and Chairman, assessors and staff of the Tribunal to be deemed to be public servants.—Every member and servant of the Board, and the Chairman and every assessor and servant of the Tribunal, shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code, 1860.

141. Contributions by Board towards leave allowances and pensions of Government servants.—The Board shall pay such contributions for the leave allowances and pension for a person in service of the [Government]² employed as the President or as a servant of the Board, or as the whole-time Chairman of the Tribunal, as may be required, by the conditions of his service under the [Government]² to be paid on his behalf.

142. Powers of President to institute, etc., legal proceedings and to obtain legal advice.—The President may, subject to the control of the Board—

- (a) institute, defend, or withdraw any legal proceedings under this Act ;
- (b) compound any offence against this Act ;
- (c) admit, compromise, or withdraw any claim made under this Act ; and
- (d) may continue, defend, compromise or withdraw any suit or proceeding or compound any offence instituted by or against the Kanpur Improvement Trust.

143. Indemnity to Board etc.—(1) No suit, prosecution, or other legal proceedings shall lie against any person or anything which is done in good faith or intended to be done in pursuance of this Act or of any rule or bye-law made thereunder.

(2) Save as otherwise expressly provided in this Act, no suit or other legal proceedings shall lie against the Board for any damage caused, or likely to be caused, by anything done in good faith or intended to be done in pursuance of this Act or any rule or bye-law made thereunder.

Subs. by the A. O. 1950 for [Provl. Govt.]

2. *Subs.* by *ibid* for [Crown].

(3) Save as otherwise expressly provided in this Act, no order made in exercise of any power conferred by or under this Act shall be called in question in any Court.

144. Notice of suit against Board, etc.—(1) No suit shall be instituted against the Board or any member or any person associated with the Board under Section 23, or against any member of a committee appointed under Section 24, or against any servant of the Board, or against any person acting under the direction of the Board or of the President or of a servant of the Board, in respect of an act purporting to be done under this Act, until the expiration of two months next after notice in writing has been, in the case of the Board, left at its office, and in any other case served through the Board on the person to be sued, stating the cause of action, the nature of the relief sought, the amount of the compensation claimed, and the name and address of the notice giver.

(2) The plaint shall contain a statement that the notice specified in sub-section (1) has been given.

(3) Notwithstanding anything contained in the Indian Limitation Act, 1908, no action such as is described in sub-section (1), shall, unless it is an action for the recovery of immovable property or for a declaration of title thereto, be commenced otherwise than within six months next after the cause of action.

(4) Nothing in sub-section (1) shall apply to a suit wherein the only relief claimed is an injunction of which the object would be defeated by the giving of the notice or by the postponement of the commencement of the suit or proceedings.

145. Mode of proof of Board's records.—A copy of any receipt, application, plan, notice, order, entry in a register, or other document in the possession of the Board shall, if duly certified by the Executive Officer or other person authorized by the Board in this behalf, be received as *prima facie* evidence of the entry or document and shall be admitted as evidence of the matter or transaction therein recorded in every case where, and to the same extent as, the original entry or document would, if produced, have been admissible to prove such matter.

146. Restriction on the summoning of Board's servants to produce documents.—No member or servant of the Board shall in any legal proceeding to which the Board is not a party be required to produce any register or document the contents of which can be proved under the preceding section by a certified copy, or to appear as a witness to prove the matter and transaction recorded therein unless the Court, for reasons to be recorded in writing, considers it necessary to make such an order.

147. Validation of acts and proceeding.—(1) No act done or proceeding taken under this Act shall be questioned on the ground merely of—

- (a) the existence of any vacancy in, or any defect in the constitution of the Board or committee ; or
- (b) any person having ceased to be a member ; or
- (c) any member, or any person associated with the Board under Section 23 or any member of a committee appointed under

this Act having voted or taken any part in any proceeding in contravention of Section 26 ; or

- (d) the failure to serve a notice on any person, when no substantial injustice has resulted from such failure ; or
- (e) any omission, defect or irregularity not affecting the merits of the case.

(2) Every meeting of the Board, the minutes of the proceedings of which have been duly signed as prescribed in clause (f) of sub-section (1) of Section 22, shall be taken to have been duly convened and to be free from all defect and irregularity.

148. General power of Board to pay compensation.—In any case not otherwise expressly provided for in this Act, the Board shall pay reasonable compensation to any person who sustains damage by reason of the exercise of any of the powers vested under this Act in the Board or the President or any servant of the Board.

149. Compensation to be paid by offender for damage caused by him.—If, on account of any act or omission, a person has been convicted of an offence under this Act, and if by reason of such act or omission, damage has been caused to any property of the Board, compensation, to be assessed by the Board, shall be paid by the said person for the said damage, notwithstanding any punishment to which he may have been sentenced for the said offence.

150. Reference to Tribunal by a person objecting to payment of compensation to the Board, or amount of compensation offered by Board.—A person aggrieved at the sufficiency of the compensation offered under Section 48, or at an order to pay compensation under Section 149, may apply to the Tribunal for reconsideration of such amount or order.

151. Relations of Board with Police.—(1) It shall be the duty of every police officer—

- (a) to communicate as soon as possible to the President or Executive Officer any information which he may obtain of a design to commit, or of the commission of, any offence against this Act or any rule or bye-law made thereunder, and
- (b) to assist the President or any servant of the Board, who reasonably asks his assistance for the lawful exercise of any power vested in the President or any such servant under this Act or any rule or bye-law made thereunder.

(2) In order to enforce the provisions of this Act or any rule or bye-law made thereunder the President of the Board may convene at any time a joint meeting of representatives of the Board, of the Municipal Board, and of the police.

152. Arrest of offenders.—(1) Every police officer shall arrest any person who commits in his view any offence against this Act or any rule or bye-law thereunder, if the name and address of such person be unknown to him, or if such person, on demand, declines to give his name and address, or gives a name or address which such officer has reason to believe to be false.

(2) The person so arrested shall without unavoidable delay be produced before the magistrate authorized to try the offence for which the arrest has been made, and no person so arrested shall be detained in custody for a period exceeding 24 hours without an order from the aforementioned magistrate.

153. Limitation for applications to the Tribunal.—Notwithstanding anything that may be contained in the Indian Limitation Act, 1908, an application presented to the Tribunal against an order passed under Sections 43, 47, 49, 64, 65, 68, 148 and 149 shall be presented within thirty days from the date of the receipt of such order.

154. Tribunal to be a civil court for the purposes of court-fees.—The Tribunal shall be deemed to be a civil court for the purposes of Schedule I of the Court Fees Act, 1870, and an application referred to in Section 153 claiming relief against any such order referred to therein shall be treated as a plaint under the Code of Civil Procedure, 1908.

155. Fees for the use or occupation of the Board's immovable property or for grant of licence, etc.—(1) The Board may charge fees to be fixed by bye-law in this behalf for the use or occupation (otherwise than under a lease) of any immovable property vested in or entrusted to the management of the Board, including any public street or place of which it allows the use or occupation.

(2) The Board may charge fees to be fixed by bye-law in this behalf for any licence, sanction or permission which it is entitled to grant under this Act.

156. Effect of supersession of the Municipal Board.—Notwithstanding anything to the contrary contained in the Municipalities Act, if at any time during the life of the Board the Municipal Board is superseded—

- (a) all powers, duties, functions and responsibilities of the Municipal Board, not provided for in this Act, shall immediately vest in the Board, and
- (b) all properties, funds and dues, which are vested in or realizable by the Municipal Board shall vest in and be realizable by the Board, and
- (c) all liabilities enforceable against the Municipal Board shall be enforceable only against the Board, and
- (d) the staff of the Municipal Board shall for the time being be deemed to have been employed under the Board, but shall be governed by the same conditions of service as were applicable to them before such supersession, and
- (e) the Chairman of the Municipal Board and the members of the said Board appointed under Section 6 shall cease to be members of the Board, and the vacancies so created shall be filled up by the [State Government]¹ by the nomination of four such other non-official persons as the [State Government]¹ may consider suitable.

1. Subs. by the A. O. 1950 for [Provl. Govt.]

157. Limitation of powers of compounding offences under the Municipalities Act.—Notwithstanding anything contained in sub-section (1) of Section 315 of the Municipalities Act, no offence under the said section shall be compounded without the prior approval of the President.

158. President may delegate his powers to any officer of the Board.—(1) The President may, by general or special order in writing, delegate to any officer of the Board any of his powers, duties or functions under this Act or any rule or bye-law, except those conferred upon him by Sections 22, 29 and 64.

(2) The Executive Officer may with the sanction of the President delegate by general or special order in writing, to any officer of the Board any of the powers, duties or functions conferred or imposed on him by this Act or any rule or bye-law.

159. Provisions of this Act and of any rule or bye-law made thereunder shall prevail.—The provisions of this Act and of any rule or bye-law made thereunder shall have effect notwithstanding anything contained in any law defining the powers, duties or obligations of any local authority of Kanpur District.

CHAPTER XIV

Rules and Bye-laws

160. Power of State Government to make rules.—(1) The State Government may make rules consistent with this Act for the carrying out of the purposes thereof.

(2) All rules made under this section shall be notified in the official *Gazette*.

161. Power of Board to make bye-laws.—The Board may from time to time with the previous sanction of the [State Government]¹ make bye-laws for the purpose of carrying out the provisions of this Act and, without prejudice to the generality of the foregoing, in particular for any or all of the following matters, namely—

- (a) prescribing the terms of recruitment and the conditions of service of the staff employed by it ; including the security that a servant of the Board may be required to furnish ;
- (b) the procedure to be followed in punishing any servant of the Board ;
- (c) the maintenance of a Provident Fund ;
- (d) prescribing the fees payable for copies of documents delivered under sub-section (3) of Section 53 ;
- (e) regulating the time and place of the meetings of the Board or any committee established under this Act, and for regulating the procedure thereof ;
- (f) all or any of the statutory responsibilities of the Board under Section 14 or Section 19 of this Act ;

¹ *Subs.* by the A. O. 1950 for [Prov. Govt.]

- (g) inspection of or entry upon, or search of, any land or building for the proper discharge of any duty imposed by this Act.

162. Printing and sale of copies of rules.—The President shall cause all rules and bye-laws made under the foregoing sections and for the time being in force to be printed, and such printed copies may be sold to the general public on payment of such fees as may be prescribed by the Board.

163. Power of State Government to cancel bye-laws.—The State Government may, after hearing the objections of the Board, rescind or modify any bye-law, and thereupon the said bye-law shall cease to have effect, or shall be modified accordingly.

164. Power of State Government or Board to prescribe punishment for the breach of any rule or bye-law.—In making any rule or bye-law the [State Government]¹ or the Board, as the case may be, may direct that the breach of it shall be punishable with a fine that may extend to Rs. 500, and in the case of a continuing breach, with a further fine which may extend to Rs. 5 for every day after the date of the first conviction, during which the offender is proved to have persisted in the offence, or with imprisonment or with both.

CHAPTER XV

Dissolution of the Board

165. Ultimate dissolution of the Board and the powers of the State Government relating thereto.—On the expiry of the period mentioned in Section 8 the [State Government]¹ may by notification declare that the Board shall be dissolved from such date as may be specified in this behalf, and may pass such further orders and may take such further action in regard to the Board as it may deem necessary.

THE SCHEDULE

(Referred to in Section 71 and Section 114)

Modifications in the Land Acquisition Act, 1894 (hereinafter called "the said Act")

1. Amendment of Section 3.—After clause (e) of Section 3 of the said Act the following shall be deemed to be inserted, namely—

"(ee) the expression, 'local authority' includes the Development Board constituted under the Kanpur Urban Area Development Act, 1945."

2. Notification under Section 4 and declaration under Section 6 to be replaced by notifications under Sections 53 and 60 of this Act.—(1) The first publication of a notice of improvement scheme under Section 53 of this Act shall be substituted for and have the same effect as publication, in the official *Gazette*, and in the locality, of notification under sub-section (1) of Section 4 of the said Act, except where a declaration under Section 4 or Section 6 of the said Act has previously been made and is still in force.

1. Subs. by the A. O. 1950 for [Provl. Govt.]

(2) Subject to the provisions of Sections 10 and 11 of this Schedule, the issue of a notice under sub-section (4) of Section 46 in the case of land acquired under that sub-section and in any other case the publication of a notification under Section 60 of this Act shall be substituted for and have the same effect as a declaration by the [State Government]¹ under Section 6 of the said Act, unless a declaration under the last mentioned section has previously been made and is still in force.

3. Amendment of Section 11.—The full-stop at the end of Section 11 of the said Act shall be deemed to be changed to a semi-colon, and the following shall be deemed to be added, namely—

“and”

“(iv) the cost which, in his opinion, should be allowed to any person who is found to be entitled to compensation, and who is not entitled to receive the additional sum of fifteen per centum mentioned in sub-section (2) of Section 23, as having been actually and reasonably incurred by such person in preparing his claim and putting his case before the Collector.”

“The Collector may disallow, wholly or in part, costs incurred by any person, if he considers that the claim made by such person for compensation is extravagant.”

4. Amendment of Section 15.—In Section 15 of the said Act, for the word and figures “and 24” the figures, word and letters “24 and 24-A” preceded by a comma, shall be deemed to be substituted.

5. Amendment of Section 17.—(1) In sub-section (3) of Section 17 of the said Act, after the figures “24” the words, figures and letters “or Section 24-A” shall be deemed to be inserted.

(2) To the said Section 17 the following shall be deemed to be added, namely:

“(4) Sub-sections (1) and (3) shall apply also in the case of any area which is stated in a certificate granted by the district magistrate or a magistrate of the first class to be unhealthy.

“(5) Before granting any such certificate, the magistrate shall cause notice to be served as promptly as may be on the persons referred to in sub-section (3) of Section 9, and shall hear without any avoidable delay any objections which may be urged by them.

“(6) When proceedings have been taken under this section, for the acquisition of any land, and any person sustains damage in consequence of being suddenly dispossessed of such land, compensation shall be paid to such person for such dispossession.”

6. Transfer of land to Board.—After Section 17 of the said Act the following shall be deemed to be inserted, namely—

“17-A. In every case referred to in Section 16 or Section 17, the Collector shall, upon payment of the cost of acquisition, make over charge of the land to the Board; and the land shall thereupon vest in the Board, subject to the liability of the Board to pay any further costs which may be incurred on account of its acquisition.”

7. Amendment of Section 18.—The full-stop at the end of sub-section (1) of Section 18 of the said Act shall be deemed to be changed to a comma, and the words “or the amount of the costs allowed” shall be deemed to be added.

8. Amendment of Section 19.—After the words “amount of compensation” in clause (c) of Section 19 of the said Act, the words “and of costs (if any)”, shall be deemed to be inserted.

9. Amendment of Section 20.—After the words “amount of compensation” in clause (c) of Section 20 of the said Act, the words “or costs” shall be deemed to be inserted.

10. Amendment of Section 23.—(1) In clause first and clause sixth of sub-section (1) of Section 23 of the said Act, for the words “publication of the notification under Section 4, sub-section (1),” and the words “publication of the declaration, under Section 6” shall be deemed to be substituted—

- (a) if the land is being acquired under sub-section (3) of Section 46 of this Act, the words “issue of the notice under sub-section (3) of Section 46 of the Kanpur Urban Area Development Act, 1945”, and
 - (b) in any other case, the words “first publication of the notification under Section 53 of the Kanpur Urban Area Development Act, 1945.”
- (2) The full-stop at the end of the sub-section (2) of Section 23 of the said Act shall be deemed to be changed to a colon, and the following proviso shall be deemed to be added :—

“Provided that this sub-section shall not apply to any land acquired under the Kanpur Urban Area Development Act, 1945, except—

- (a) land acquired under sub-section (4) of Section 46 of that Act, and
 - (b) buildings in the actual occupation of the owner or occupied free of rent by a relative of the owner, and land appurtenant thereto, and
 - (c) gardens not let to tenants but used by the owners, as a place of resort.”
- (3) At the end of Section 23 of the said Act, the following shall be deemed to be added, namely—

, ‘(3) For the purposes of clause first of sub-section (1) of this section—

- (a) the market-value of the land shall be the market-value according to the use to which the land was put at the date with reference to which the market-value is to be determined under that clause ;
- (b) if it be shown that before such date the owner of the land had in good faith taken active steps and incurred expenditure to secure a more profitable use of the same, further compensation based on his actual loss may be paid to him ;
- (c) if any person, without the premission of the Board required by clause (b) of sub-section (1) of Section 46 or by sub-

section (3) of Section 47 or by sub-section (3) of Section 49 of the Kanpur Urban Area Development Act, 1945, has erected, re-erected, added to or altered any building or wall so as to make the same project beyond the street alignment prescribed under Section 46 or the street alignment or building line shown in any plan finally adopted by the Board under Section 47 or within the area specified in sub-section (3) of Section 49 as the case may be, then any increase in the market-value resulting from such erection, re-erection, addition or alteration shall be disregarded ;

- (d) if the market-value has been increased by means of any improvement made by the owner or his predecessor-in-interest within two years before the aforesaid date, such increase shall be disregarded unless it be proved that the improvement so made was made in good faith and not in contemplation of proceedings for the acquisition of the land being taken under this Act ;
- (e) if the market-value is specially high in consequence of the land being put to a use which is unlawful or contrary to public policy, that use shall be disregarded and the market-value shall be deemed to be the market-value of the land if put to ordinary uses ;
- (f) if the market-value of any building is specially high in consequence of the building being so overcrowded as to be dangerous to the health of the inmates, such overcrowding shall be disregarded, and the market-value shall be deemed to be the market-value of the building if occupied by such number of persons only as could be accommodated in it without risk of danger from overcrowding ;
- (g) when the owner of the land or building has after the passing of the Kanpur Urban Area Development Act, 1945, and within two years preceding the date with reference to which the market-value is to be determined, made a return under Section 158 of the United Provinces Municipalities Act, 1916, of the rent of the land or building, the rent of the land or building shall not in any case be deemed to be greater than the rent shown in the latest return so made, save as the Court may otherwise direct, and the market-value may be determined on the basis of such rent :

Provided that where any addition to, or improvement of, the land or building has been made after the date of such latest return and previous to the date with reference to which the market-value is to be determined, the Court may take into consideration any increase in the letting value of the land due to such addition or improvement."

11. Amendment of Section 24.—For clause "seventhly" of Section 24 of the said Act, the following shall be deemed to be substituted, namely—

"Seventhly, any outlay on additions or improvements to land acquired, which was incurred after the date with reference to which the market-value is to be determined, unless such additions or improvements

were necessary for the maintenance of any building in a proper state of repair.¹¹

12. New Section 24-A.—After Section 24 of the said Act, the following shall be deemed to be inserted, namely—

“24-A. Further provision for determining compensation.—In determining the amount of compensation to be awarded for any land acquired for the Board under this Act, the Tribunal shall also have regard to the following provisions, namely—

(1) When any interest in any land acquired under this Act has been acquired after the date with reference to which the market-value is to be determined, no separate estimate of the value of such interest shall be made so as to increase the amount of compensation to be paid for such land ;

(2) if, in the opinion of the Tribunal, any building is in a defective state, from a sanitary point of view, or is not in a reasonably good state of repair, the amount of compensation for such building shall not exceed the sum which the Tribunal considers the building would be worth if it were put into a sanitary condition or into a reasonably good state of repair, as the case may be, minus the estimated cost of putting it into such condition or state ;

(3) if, in the opinion of the Tribunal, any building which is used or is intended or is likely to be used for human habitation, is not reasonably capable of being made fit for human habitation, the amount of compensation for such building shall not exceed the value of the materials of the building, minus the cost of demolishing the building.”

13. Amendment of Section 31.—(1) After the words “the compensation” in sub-section (1) of Section 31 of the said Act, and after the words “the amount of the compensation” in sub-section (2) of that section the words “and costs (if any)” shall be deemed to be inserted.

(2) After the words “any compensation” in the concluding proviso to sub-section (2) of Section 31 of the said Act the words “or costs” shall be deemed to be inserted.

14. New Section 48A.—After Section 48, the following shall be deemed to be inserted, namely.

“48-A. Compensation to be awarded when land not required within two years.—If within a period of two years from the date of the publication of the declaration under Section 6 in respect of any land, the Collector has not made an award under Section 11, with respect to such land, the owner of the land shall, unless he has been to a material extent responsible for the delay, be entitled to receive compensation for the damage suffered by him in consequence of the delay.

(2) The provisions of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section.”

15. Amendment of Section 49.—After sub-section (1) of Section 49 of the said Act, the following shall be deemed to be inserted, namely—

“(1a) For the purposes of sub-section (1) land which is held with and attached to a house and is reasonably required for the enjoyment and use of the house shall be deemed to be part of the house.”

THE KANPUR URBAN AREA DEVELOPMENT BOARD (AMENDMENT OF CONSTITUTION) ACT, 1948¹

(U. P. Act No. II of 1948)

CONTENTS

Sections

1. Short title and commencement.

[Received the assent of the Governor of the United Provinces on January 9, 1948, under Section 75 of the Government of India Act, 1935, as adapted by the India (Provisional Constitution) Order, 1947, and was published in the United Provinces Gazette Extraordinary, dated January 12, 1948].

(Passed by the United Provinces Legislative Assembly on November 6, 1947, and the United Provinces Legislative Council on September 20, 1947.)

An Act

to amend the Kanpur Urban Area Development Board Act, 1945, for certain purposes.

Whereas the existing constitution of Kanpur Development Board does not provide for adequate representation of all interests concerned with the development of Kanpur.

And whereas it is expedient to provide for such representation ;

It is hereby enacted as follows :—

1. Short title and commencement.—(1) This Act may be called the Kanpur Urban Area Development Board (Amendment of Constitution) Act, 1948.

[(2) It shall be deemed to have come into force on the date it was first published in the official *Gazette*.]²

2. Incorporated in clause (g) of sub-section (1) of Section 6 and clauses (b) and (c) of sub-section (1) of Section 22 of the Kanpur Urban Area Development Board Act, 1945.

3. The provisions of Section 6 of the United Provinces General Clauses Act, 1904, shall apply upon the expiry or withdrawal of the Kanpur Urban Area Development Board (Amendment of Constitution) Ordinance, 1947, as if it had then been repealed by an United Provinces Act ; and any order or appointment made and direction issued under the said Ordinance and in force immediately before the commencement of this Act shall continue in force and be deemed to be made or issued under this Act.

For S. O. R., see *Gaz. Extra.*, d. Sep. 12, 1947 ; for discussion see L. A. Pro., d. Nov. 6, 1947 in Vol XLIII, p. 299, and d. Feb. 24, 1948 in Vol. XLIV, p. 53 ; and L. C. Pro., d. Sep. 15 and 20, 1947 in Vol. IX, pp.

474, 802—807 and Feb. 24, 1948 in Vol. X, p. 603 respectively.

2. Subs. by S. 2 of U. P. Act IV of 1951 for sub-s. (2) of S. infra for S. 3 of the Act.

**THE KANPUR URBAN AREA DEVELOPMENT BOARD
(AMENDMENT OF CONSTITUTION) (VALIDATION
OF PROCEEDINGS) ACT, 1950¹**

(U. P. Act No. IV of 1951)¹

CONTENTS

Sections

1. Short title and commencement.
2. Amendment of sub-section (2) of Section 1 of the U. P. Act II of 1948.

Sections

3. Removal of doubts and validation of proceedings.
4. Repeal.

Authoritative English text² of the Kanpur Urban Area Development Board (Amendment of Constitution) (Karyawahi Vaidhikaran) Adhiniyam of 1950.

An Act

to amend the Kanpur Urban Area Development Board (Amendment of Constitution) Act, 1947, and for the removal of doubts and validation of proceedings thereunder.

Whereas the Kanpur Urban Area Development Board (Amendment of Constitution) Act, 1947, was amended by the Kanpur Urban Area Development Board (Amendment of Constitution) (Validation of Proceedings) Ordinance, 1950 ;

And whereas it is expedient to replace the said Ordinance by an Act of the Legislature ;

It is hereby enacted as follows :—

1. Short title and commencement.—(1) This Act may be called the Kanpur Urban Area Development Board (Amendment of Constitution) (Validation of Proceedings) Act, 1950.

(2) It shall come into force at once.

2. Amendment of sub-section (2) of Section 1 of the U. P. Act II of 1948.—Incorporated in sub-section (2) of Section 1 of the Kanpur Urban Area Development Board (Amendment of Constitution) Act, 1947.

3. Removal of doubts and validation of proceedings.—For the removal of doubts it is hereby declared that notwithstanding anything contained in sub-section (2) of Section 1 of the Principal Act, as it existed immediately before the promulgation of the Kanpur Urban Area Development Board (Amendment of Constitution) (Validation of Proceedings) Ordinance, 1950, all orders made, actions or proceedings taken, directions issued or jurisdiction exercised by any authority under or in accordance with the provisions of the Principal Act during the period from January 12, 1948, up to the commencement of this Act, shall be deemed to be as good and valid in law as if such orders, actions, pro-

1. For S. O. R., see *Gaz. Extra.*, d. Nov. 2, 1950. For discussion, see L. A. Pro., d. Jan. 3, 1951 in Vol. LXXXVII, p. 108 d. Jan. 16, 1951 in Vol. LXXXIX, pp. 80-81 and d. Feb. 28, 1951, in Vol. XCI, p. 133 and L. C. Pro., d. Dec. 20 and 26, 1950 in Vol. XXI, pp. 42 and 162-163 and d. Feb. 26, 1951 in Vol. XXII, p. 154 respectively.
2. Passed in Hindi by the Uttar Pra-

desh Legislative Council on Dec. 26, 1950, and by the Uttar Pradesh Legislative Assembly on January 16, 1951.

Received the assent of the Governor on January 29, 1951, under Article 200 of the Constitution of India and was published in the *Uttar Pradesh Gazette Extraordinary*, dated January 29, 1951, p. 3.

ceedings, directions and jurisdictions had been duly taken or issued or exercised under or in accordance with the provisions of the Principal Act as amended by this Act.

4. Repeal.—The Kanpur Urban Area Development Board (Amendment of Constitution) (Validation of Proceedings) Ordinance, 1950, is hereby repealed and the provisions of Sections 6 and 24 of the U. P. General Clauses Act, 1904, shall apply to it as if it had been an Act repealed by an United Provinces Act.

THE UTTAR PRADESH KANS ERADICATION ACT, 1951¹

(U. P. Act No. XXII of 1951)

CONTENTS

Sections

1. Short title, extent and commencement.
2. Definitions.
3. Declaration of 'kans' area.
4. Cancellation of notification under Section 3.
5. Power to survey and carry on 'kans' eradication operations.
6. Owners and other persons not to obstruct the operation.
Cost of the 'kans' operations.

Sections

8. Return of the 'kans' lands.
9. Compensation for damages.
10. Power of 'Kans' Officer to enforce compliance.
11. Persons acting under the Act to be public servants.
12. Protection of persons acting in good faith.
13. Delegation of powers.
14. Power to make rules.

Authoritative English Text of the Uttar Pradesh Kans Utpatan Adhiniyam, 1951

An Act

to provide for eradication of 'kans' weed in certain areas of Uttar Pradesh

Whereas it is expedient to provide for eradication of *kans* weed in certain areas of Uttar Pradesh ;

It is hereby enacted as follows :—

1. Short title, extent and commencement.—(1) This Act may be called the Uttar Pradesh *Kans* Eradication Act, 1951.

(2) It extends to the whole of Uttar Pradesh.

(3) It shall come into force on such date² as the State Government may, by notification in the official *Gazette*, specify in this behalf.

2. Definitions.—In this Act, unless there is anything repugnant in the subject or context—

(a) "*Kans* eradication operations" means such operations as are considered necessary by the *Kans* Officer to eradicate the weed known as *kans* ;

(b) "*Kans* area" means the area which the State Government may, by notification, under sub-section (1) of Section 3 declare to be an area infested with *kans* ;

For S. O. R. see *Gaz. Extra*, d. Sep. 4, 1951.

For discussions, see L. A. Pro., d. Sept. 6, 1951, in Vol. XCVII, p. 223 and 241—46, d. March 7, 1952, in Vol. C, p. 20 and L. C. Pro. d. Sep. 17, 1951, in Vol. XXIII, pp. 312—324, d. March 7, 1952, in Vol. XXIV, p. 294.

Passed in Hindi by the Uttar Pradesh Legislative Assembly on September 6, 1951, and by the Uttar Pradesh

Legislative Council on September 17, 1951.

Received the assent of the Governor on October 3, 1951, under Article 200 of the Constitution of India and was published in the *Uttar Pradesh Gazette Extraordinary*, dated October 15, 1951.

2. The Act came into force on Oct. 29, 1951, see not. no. C-5118/ XII-A, d. Oct. 29, 1951, in *Gaz. d. Nov. 3, 1951*, Pt. I, p. 838.

- (c) "*Kans* Officer" means the Collector of the district and includes any other Officer authorised by the State Government or by the *Kans* Officer, to exercise all or any powers conferred upon him under this Act;
- (d) "prescribed" means prescribed by rules under this Act;
- (e) "State Government" means the Government of Uttar Pradesh.

3. Declaration of 'kans' area.—(1) If the State Government is of the opinion that any area is infested with *kans*, it may, by notification published in the official *Gazette* declare such area, giving full particulars of the lands included therein to be a *kans* area for the purpose of this Act.

(2) The publication of notification under sub-section (1) shall be a sufficient notice of the facts stated therein to all persons owning or having interest in the land or lands comprised in such area.

4. Cancellation of notification under Section 3.—If any person interested in any land included in the *kans* area files an objection within 30 days of the notification under Section 3 that the *kans* area or any part thereof ought not to be taken up for *kans* eradication operations for the reasons to be stated by the objector, the State Government may, after making such enquiries as may be necessary, cancel the notification either in respect of the entire area, whereupon the area shall cease to be *kans* area or in respect of the part whereupon such part shall cease to be included in the *kans* area.

5. Power to survey and carry on 'kans' eradication operations.—(1) After 30 days of the date of publication of the notification under sub-section (1) of Section 3 in respect of any area, and where any objection has been filed under Section 4 after the disposal of such objection, it shall be lawful for the *Kans* Officer and his subordinates or workmen authorised by him in this behalf to—

- (a) enter upon and survey and take levels of any land in the *kans* area;
- (b) to dig or bore into the sub-soil of any such land;
- (c) to set out the boundaries of the lands included in the *kans* area; and
- (d) to do all acts necessary for the purpose of *kans* eradication operations therein.

(2) The work relating to *kans* eradication operations shall be completed within one year from the date of publication of notification under Section 3.

(3) Where *kans* eradication operations have been completed in all the lands included in any *kans* area the State Government shall publish a notification in the official *Gazette* to that effect and thereupon the *kans* eradication operations shall be deemed to have been closed and from that date the area shall cease to be a *kans* area.

6. Owners and other persons not to obstruct the operation.—(1) Any person owning or having an interest in the land included in the *kans* area shall not during the period of *kans* eradication operations do any act on or upon such land so as to hamper or obstruct the *kans* eradication operations.

(2) If any person hampers or obstructs the *kans* eradication operations, he shall be liable on conviction to a fine not exceeding Rs. 1,000.

(3) The *Kans* Officer shall maintain the accounts in the prescribed manner of all expenditure incurred in connexion with *kans* eradication

operations and the same shall be receivable as evidence of facts stated therein and shall not be called in question in any suit or other legal proceeding.

7. Cost of the 'kans' operations.—(1) The total expenditure incurred by the State Government on *kans* eradication operations on the land in the *kans* area (hereinafter called the cost of *kans* operations) shall be equitably apportioned, according to the area of the land from which *kans* has been eradicated, by the *Kans* Officer as between the several owners or persons having interest in the land or lands in the *kans* area and the *Kans* Officer shall fix the amount to be paid by each such owner or person and the amount so fixed shall be a charge on the land to which it relates. The amount so fixed shall not be called in question in any suit or other legal proceeding.

(2) The *Kans* Officer shall further determine whether the amount apportioned under sub-section (1) shall be paid by the person owning or having an interest in the land in one lump sum or by annual instalments, and where it directs annual instalments, he may fix the amount and number of such instalments.

(3) The *Kans* Officer shall cause to be served on the person owning or having an interest in the land in which *kans* operations have been carried on a notice of demand specifying the amount of cost of *kans* operations payable by him and the period within which it shall be paid. If the person upon whom the notice is served refuses to pay or defaults in payment of any instalment, the amount shall be recoverable as if it were an arrear of land revenue.

8. Return of the 'kans' lands.—Upon payment or recovery of the cost of *kans* operations specified in the notice under sub-section (3) of Section 7 or upon execution of a bond for payment of the same by annual instalments fixed under sub-section (2) of the said section, the *Kans* Officer shall restore the land included in the *kans* area to such owner or other person.

9. Compensation for damages.—(1) Any person may, within 30 days from the date of issue of notification under sub-section (3) of Section 5, apply to the *Kans* Officer for payment of compensation for destruction of, or damage to any tree, harvest and other things, as may be prescribed, in his land as a result of *kans* eradication operations carried on under Section 5 and for the loss of harvest from cultivated land entered upon under the said section.

(2) On the receipt of such application the *Kans* Officer may in the manner prescribed make such enquiry as may be necessary and grant such amount of compensation as may appear to be just and proper. The order of the *Kans* Officer granting compensation shall be final and conclusive.

10. Power of 'Kans' Officer to enforce compliance.—The *Kans* Officer may take or cause to be taken such steps or used or cause to be used such force as may in his opinion be reasonably necessary for securing compliance with the provisions of this Act.

11. Persons acting under the Act to be public servants.—All persons acting in pursuance of the provisions of this Act shall be deemed to be public servants within the meaning of that expression in the Indian Penal Code, 1860.

12. Protection of persons acting in good faith.—No suit, prosecution or other legal proceedings shall be instituted against the

Government or any person for anything which is in good faith done or intended to be done under this Act.

13. Delegation of powers.—The State Government may, by notification in the *Gazette*, delegate to any officer or authority or subordinate to it, any of the powers conferred by it under this Act to be exercised subject to such restrictions and conditions as may be specified in the notification.

14. Power to make rules.—(1) The State Government may, by notification, make rules for carrying out the purpose of this Act.

(2) Without prejudice to the generality of the foregoing powers, such rules may provide for—

- (a) the form and the manner of publication of the notification to be published under Section 3 ;
- (b) the manner in which objections shall be fixed and heard under Section 4 ;
- (c) the manner in which and the matters on which enquiry shall be made under Section 4 ;
- (d) the scheme and programme of *kans* eradication operations for the purposes of Section 5 ;
- (e) the form of the notification under sub-section (3) of Section 5 ;
- (f) the circumstances under which and the purposes for which permission may be granted under Section 6 ;
- (g) the matters relating to the maintenance of accounts under sub-section (3) of Section 6 ;
- (h) the manner in which the cost of *kans* operations shall be determined, apportioned and paid under Section 7 ;
- (i) the adjustment of the cost of *kans* operations against the income, if any, from the sale-proceeds of the products or produce from land included in the *kans* area ;
- (j) the form of the notice under sub-section (3) of Section 7 and the manner in which it shall be served ;
- (k) the form of the bond to be executed under Section 7 ;
- (l) the factors to be taken into consideration for determination of the compensation under Section 8 ;
- (m) the procedure to be followed in the proceedings relating to compensation under Section 8 and the appeals relating thereto ; and
- (n) the guidance generally of the *Kans* Officer and other Officers in any matter connected with the carrying out of the provisions of this Act.

KUMAUN AGRICULTURAL LANDS (MISCELLANEOUS PROVISIONS) ACT, 1954

(U. P. Act No. XXI of 1954)

CONTENTS

Sections

1. Short title, extent and commencement.
2. Definitions.
3. Ejectment of tenants.
4. Other directions in the order of ejectment.
5. Sub-letting by tenants.

Sections

6. Illegal dispossession.
7. Commutation of rent.
8. Assessment of land revenue on extensions.
9. Rent on extension.
10. Power to make rules.

English translation of the Uttar Pradesh Kumaun Krishi Bhoomi (Prakirn Upbandh) Adhiniyam, 1954 as passed by the Uttar Pradesh Legislature, and assented to by the Governor on October 18, 1954, and published in the U. P. Gazette, Extraordinary, dated October 21, 1954.

An Act

to provide for security of tenure and to make other miscellaneous provisions relating to agricultural lands in Kumaun.

Whereas it is expedient to provide for security of tenure and other miscellaneous provisions relating to agricultural lands in Kumaun ;

It is hereby enacted as follows :—

1. Short title, extent and commencement.—(1) This Act may be called the Kumaun Agricultural Lands (Miscellaneous Provisions) Act, 1954.

(2) It shall extend to the district of Tehri-Garhwal and the whole of the Kumaun division except the areas which are included in Government Estates or to which the U. P. Zamindari Abolition and Land Reforms Act, 1950, applies.

(3) It shall come into force at once.

Notes :—For the Statement of Objects and Reasons, see the U. P. Gazette Extraordinary dated 24th March, 1954.

2. Definitions.—In this Act unless there is anything repugnant in the subject or context—

(a) “prescribed” means prescribed by rules framed under this Act ;

(b) “State Government” means the Government of Uttar Pradesh ;

(c) “tenant” includes a *sirtan* but does not include a *khaikar* or *maurusidar* ; and

(d) words and expressions used but not defined in this Act shall have the meaning assigned to them in the law relating to land revenue or land tenure applicable to Kumaun.

3. Ejectment of tenants.—Notwithstanding any law, custom or contract to the contrary—

(1) no tenant shall be ejected from his holding or any portion thereof save in pursuance of an order of a competent court ; and

(2) no court shall order ejectment of a tenant from his holding or any portion thereof except on one or more of the following grounds, namely—

(a) that a decree against him or his predecessor-in-interest for arrears of rent in respect of that holding on account of any agricultural year, remains unsatisfied for a period exceeding one year from the date of the decree ; or

(b) that he has committed an act or omission detrimental to the land included in his holdings or inconsistent with the purposes for which it was let ;

(c) that he has sub-let his holdings or any part thereof in contravention of the provisions of this Act.

4. Other directions in the order of ejectment.—When the Court makes an order for the ejectment of a tenant on the ground mentioned in clause (b) of sub-section (2) of Section 3, it shall further direct that if the tenant repairs the damage within three months from the date of the decree or within such further period as the Court may, for

reasons to be recorded, allow, the decree shall not be executed except in respect of costs.

5. Sub-letting by tenants.—Notwithstanding anything in any law, no tenant shall sub-let the whole or any portion of his holding except where the lessor is—

- (i) an unmarried woman or if married, has been divorced, or separated from her husband, or is a widow ;
- (ii) a minor whose father is dead ;
- (iii) a person prosecuting studies in a recognised institution and is not more than 25 years of age ;
- (iv) a lunatic or an idiot ;
- (v) a person incapable of cultivating by reasons of blindness or other physical infirmity ;
- (vi) in the military, naval or air service of the Union ; or
- (vii) undergoing imprisonment for a term exceeding three months :

Provided that in the case of holding held jointly by more persons than one, this exception shall not apply unless all such persons are at the commencement of the lease subject to one or other of the aforesaid disability.

6. Illegal dispossession.—(1) If a landholder dispossesses a tenant from his land otherwise than in accordance with the provisions of the law in that behalf, the landholder shall be presumed to have done so with the intent to annoy or intimidate such tenant within the meaning of Section 441 of the Indian Penal Code.

(2) Whenever a person is convicted of an offence of criminal trespass in respect of a land in the possession of a tenant and it appears to the court that the tenant has been dispossessed thereby of the land, it may, if it thinks fit, when convicting such person or at any time within two months from the date of the conviction, order the tenant dispossessed to be restored to the possession of the same.

(3) The order under sub-section (2) shall not prejudice any right or interest to or in any such land which any person may be able to establish in the appropriate court.

(4) An order under this section may be made by any court of appeal, reference or revision.

7. Commutation of rent.—Where the rent payable by a tenant is payable in kind or on estimate or appraisal of the standing crop or on rates varying with crops sown or partly in one of such ways and partly in another or other of such ways, the Assistant Collector may, on his own motion, and shall, on the application of the person by or to whom the rent is payable, commute the rent in the manner and at rates to be prescribed having regard to the nature of the soil.

8. Assessment of land revenue on extensions.—(1) Notwithstanding anything contained in the U. P. Land Revenue Act, 1901, or any other law in that behalf, the State Government may direct that land revenue be assessed on any "extension" made after the last Settlement made previous to the commencement of this Act, and thereupon land revenue shall be assessed on such land.

(2) The land revenue to be assessed on the said "extension" shall bear the same incidence as the land of which it is the extension and shall be payable by the persons liable to pay the land revenue of the land of which it is the extension.

(3) The provisions of the U. P. Land Revenue Act, 1901, shall, so far as they are not inconsistent with the provisions of this Act, apply

for the purposes of assessment of land revenue under sub-section (2).

Explanation.—In this section the word “extension” has the meaning assigned to it in clause (2) of Section 3 of the Kumaun Nayabad and Waste Lands Act, 1948.

9. Rent on extension.—Where land revenue has been assessed on an extension under Section 8 and such extension is held by a tenant, the tenant shall be liable to pay rent for the extension to the landholder at the same rate at which rent is payable for the land of which it is the extension :

Provided that where the rent for the extension determined in accordance with this section exceeds 125 per cent. of the land revenue assessed thereon under Section 8, the rent payable shall be the amount of land revenue *plus* 25 per cent. thereof.

Explanation.—For purposes of this section the expression ‘tenant’ includes a *khaikar* and a *maurusidar*.

10. Power to make rules.—The State Government may make rules for purposes of carrying into effect the provisions of this Act.

REVENUE DEPARTMENT

Miscellaneous

October 3, 1955

No. 6021/I-A-1062-54.—In continuation of Government notification No. 4043/I-A-1062-54 dated August 2, 1955 and in exercise of the powers conferred by Section 10 of the Kumaun Agricultural Land (Miscellaneous Provisions) Act, 1954 (U. P. Act No. XXI of 1954), the Governor of Uttar Pradesh has been pleased to make the following rules :

RULES

1. (1) These rules may be called the Kumaun Agricultural Land (Miscellaneous Provisions) Rules, 1955.

(2) These rules shall come into force at once.

2. In these rules, unless there is anything repugnant to the subject or context—

(i) “Act” means the Kumaun Agricultural Land (Miscellaneous Provisions) Act, 1954, and

(ii) words and expressions used but not defined in these rules shall have the meaning assigned to them in the Act.

3. In proceedings for the ejectment of a tenant on any one of the grounds mentioned in sub-section (2) of Section 3, the procedure laid down in the Kumaun Tenancy Rules, 1918, shall so far as it is not inconsistent with the provisions of the Act or the Rules made thereunder apply.

4. An application under Section 7 shall lie in the Court of the Assistant Collector in charge of the sub-division in which the holding, in respect of which the application is filed, is situate.

5. An application under Rule 4 shall be accompanied by an extract from the *muntakhib* in respect of the holding in question and shall contain the following particulars :

(1) Name, parentage and address of the applicant.

(2) Name, parentage and address of the opposite party.

(3) Particulars of the holding—

(a) Name of village, with *thok patti*, etc.

(b) Plot number.

(c) Area of the holding.

(4) Whether the applicant or, in cases, where the applicant is not a tenant, the tenant of a holding is a *kachcha khaikar* or *pacca khaikar* or a *sirtan*.

(5) Details of the rent payable.

Note:—In this column, it should be clearly stated whether the rent is payable in kind or on estimate or appraisal of the standing crop or on rates varying with the crops sown on partly in one of such ways or partly in another or other of such ways, what proportion of produce the rent represents is, and in what manner the rent is paid.

6. The Assistant Collector Incharge of the sub-division shall send the application received by him under Rule 4 to the Tahsildar concerned with the direction that he will verify the particulars given therein and along with his verification report furnish the following further information :

(a) Land revenue (or mamla) assessed on the holding.

(b) Any other dues (cesses Padhanchari dues, etc.) payable by the landlord in respect of the holding.

7. On receipt of the Tahsildar's report under Rule 6 the Assistant Collector shall tentatively fix the rent payable in respect of the holding. The rent so fixed shall not exceed $7\frac{1}{2}$ times the revenue (including the cesses and other Government dues, if any), payable by the *hissedar* or 5 times the rent payable by the *khaikar* according as the *sirtan* holds from a *hissedar* or a *khaikar*.

8. As soon as the Assistant Collector incharge of the sub-division, has fixed tentative cash rent under Rule 7, he shall issue a notice to the parties concerned, intimating the rent proposed to be fixed and inviting objections thereon and specifying the date on which the same shall be heard.

9. After hearing the objections, if any, the Assistant Collector incharge of the sub-division, shall fix the rent payable for the holding.

10. The rent fixed under Rule 9 shall be payable with effect from the Fasli year immediately following that in which the order fixing the rent is passed.

THE KUMAUN ANIMAL TRANSPORT CONTROL ACT, 1947¹

(U. P. Act No. XV of 1947)

CONTENTS

Sections

1. Short title, extent and commencement.
2. Definitions.
3. Prohibition against plying transport animal for hire without licence.
4. Application for licence.
5. Prohibition against charging rates higher than prescribed rates.
6. Power of District Magistrate to requisition services of transport animal.
7. Suspension or cancellation of licence.

Sections

8. Appeals.
9. Period and renewal of licence.
10. Delegation of powers.
11. Penalty.
12. Effect of orders inconsistent with other enactment.
13. Protection of action taken under the Act.
14. Orders under the Act not to be questioned in any court.
15. Rule-making power.

SCHEDULES

1. For S. O. R., see *Gaz., Extra.*, d. April 10, 1947, p. 1; for discussion, see *L. A. Pro.*, d. April 25, 1947, in Vol. XXXVIII, pp. 166—198, d. June 5, 1947, in Vol. XLII, pp. 124—126, d. Nov. 4, 1947, in Vol.

XLIII, p. 122 and *L. C. Pro.*, d. May 26, 1947 and Sept. 11, 1947, in Vol. IX, pp. 34, 56—60, 365 and 365—366 respectively. The Kumaun Animal Transport Control Ordinance, 1947 (I of 1947), expired.

Amended by the U. P. Act No. V of 1950²

Adapted and modified by the Adaptation of Laws Order, 1950

[Passed by the United Provinces Legislative Assembly on April 25, 1947 and the United Provinces Legislative Council on May 26, 1947.]

[Received the assent of the Governor-General on July 1, 1947, under Section 76 of the Government of India Act, 1935 and was published³ in the United Provinces Government Gazette Extraordinary of July 8, 1947.]

An Act

to provide for the control of animal transport in the Kumaun Division

Whereas it is necessary and expedient to control animal transport in the Kumaun Division for the purpose of distributing goods essential to the life of the community ;

It is hereby enacted as follows :—

1. Short title, extent and commencement.—(1) This Act may be called the Kumaun Animal Transport Control Act, 1947.

(2) It extends⁴ to the whole of the Kumaun Division.

(3) It shall come into force at once.

2. Definitions.—In this Act—

(1) "Essential commodity" means any of the commodities specified in Schedule I, and such other commodity as the [State Government]⁵ may, from time to time by notification in the official *Gazette*, specify in this behalf.

(2) "Transport animal" means a mule, pony or donkey plying for hire.

(3) "Licensing authority" means any official authorized by the District Magistrate to issue a licence under this Act.

(4) "Prescribed rates" means hire charges fixed by the District Magistrate for the transport of any essential commodity by a transport animal.

3. Prohibition against plying transport animal for hire without licence.—No person shall ply for hire any transport animal except under and in accordance with the terms of a licence issued by the licensing authority in Form I, specified in Schedule II.

4. Application for licence.—(1) An application for a licence under this Act shall be made in Form II specified in Schedule II.

2. For S. O. R. see *Gaz. Extra.*, d. Feb. 23, 1950. For discussion, see L. A. Pro., d. March. 2, 1950, in Vol. LXVI, pp. 237-238, d. April 19, 1950, in Vol. LXXI, p. 114 and L. C. Pro., d. Feb. 25 and 28, 1950, in Vol. XIV, pp. 323 and 360-367, respectively d. April 20, 1950, in Vol. XV, p. 480. Ordinance No. XI of 1949 was repealed by S. 3 of U. P. Act V of 1950.

For publication see *Gazette Extraordinary*, d. March 16, 1950.

Passed in Hindi by the Uttar Pradesh Legislative Assembly on March 2, 1950 and by the Uttar Pradesh Legislative Council on February 28,

1950.

Received the assent of the President on March 15, 1950, under Article 201 of the Constitution of India and was published in the *Uttar Pradesh Gazette Extraordinary*, dated March 16, 1950.

3. See *Gaz.*, 1947, *Extra.*, pp. 1-4.

4. This Act has been extended to Tehri-Garhwal by S. 3 and Sch. of Tehri-Garhwal (Application of Laws) Order, 1949, w. e. f. Nov. 30, 1949, vide not. No. 3262/XVII, d. Nov. 30, 1949.

5. Subs. by the A. O. 1950 for [Provl. Govt.].

(2) The licensing authority may, for reasons to be recorded, refuse an application for licence under this Act.

5. Prohibition against charging rates higher than prescribed rates.—No person holding a licence under this Act shall charge rates higher than the prescribed rates for carrying any essential commodity by a transport animal.

6. Power of District Magistrate to requisition services of transport animal.—The District Magistrate may, by order in writing, require a person, plying a transport animal for hire, to use such animal for the carriage of any foodstuffs [cotton and woollen textiles, petroleum and petroleum products]¹ in such manner, for such rates and subject to such conditions as the District Magistrate may specify in this behalf:

Provided that rates fixed under this section may, in particular circumstances, be higher than the prescribed rates.

7. Suspension or cancellation of licence.—The Sub-Divisional Magistrate may, for reasons to be recorded, suspend or cancel any licence granted under this Act:

Provided that no order of suspension shall remain in force for more than six weeks from the date of such order.

8. Appeals.—An appeal against an order passed under sub-section (2) of Section 4 and Section 7 shall lie to the District Magistrate within 30 days of the date of such order.

9. Period and renewal of licence.—(1) A licence granted under this Act shall be valid for a period of one year from the date of its issue. It may be renewed for a further period of one year if an application for renewal is made in Form III specified in Schedule II within one month of the expiry of the licence.

(2) Where an application for renewal is made, the licence shall continue to be valid, till it is renewed, or its renewal is refused.

10. Delegation of powers.—The District Magistrate may, by order in writing, authorize any officer subordinate to him to exercise all or any of the powers exercisable by him under this Act.

11. Penalty.—Any person who contravenes any of the provisions of this Act, or any order made thereunder, shall be punished with imprisonment which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

12. Effect of orders inconsistent with other enactment.—Any order made under this Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act, or any instrument having effect by virtue of any enactment other than this Act.

13. Protection of action taken under the Act.—No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of any order made under this Act.

14. Orders under the Act not to be questioned in any court.—No order made in exercise of any power conferred by or under this Act shall be called in question in any court.

15. Rule-making power.—The [State Government]² may, by

1. Ins. by S. 2 of U. P. Act V of 1950.

2. Subs. by the A. O. 1950 for [Prov], Govt.].

notification in the official *Gazette*, make rules to give effect to the purposes of this Act.

16. Any order made or action taken under the Kumaun Animal Transport Control Ordinance, 1947, shall be deemed to have been made or taken under the corresponding provisions of this Act as if this Act had commenced on May 8, 1947.

SCHEDULE I

1. Foodstuffs, including edible oils and oilseeds.
2. Cotton and woollen textiles.
3. Petroleum and petroleum products.
4. Drugs.
5. Iron and steel.
6. ¹[Resin]

SCHEDULE II

FORM I

Licence Form

Particulars of Licence

1. Number of licence.
2. Name, parentage, caste and residence of the licensee.
3. Number of ponies, donkeys and mules in respect of which licence is issued.
4. Name, parentage, caste and residence of drivers.
5. Route or area, for which the licence shall be valid.
6. Period of licence.
7. Renewed for

.....
.....

Conditions of licence

1. The licensee shall not charge rates higher than the prescribed rates given below except as provided for in Section 6.

Schedule of rates

2. The licensee shall immediately inform the licensing authority of any change in the particulars of the licence and get the licence amended, if necessary.
3. The licence shall be produced for inspection on demand by any police officer or any other official not inferior in rank to a patwari.
4. The licensee shall, within one month of the receipt of the licence, attach to the neck of the transport animal a wooden ticket, displaying the number of the licence. Such tickets shall be obtainable from the licensing authority on payment of annas four for each ticket.
5. The licensee shall obey any other instructions given to him by the licensing authority for carriage of any essential commodity.

Signature of

Licensing Authority.

Date.....

FORM II*Application for licence*

1. Name, parentage, caste and residence of applicant.
2. Number of ponies, donkeys or mules for which licence is applied for.
3. Name, parentage, caste and residence of drivers employed.
4. Route or area over which an animal shall ply for hire.

Date.....

Signature of Applicant

FORM III*Application for renewal of licence*

1. Number of licence.
2. Name, parentage, caste and residence of licensee.
3. Date of the last renewal.
4. Period of the last renewal.
5. Any change in the particulars of the licence on or after the date of the expiry of the licence.

THE KUMAUN NAYABAD AND WASTE LANDS ACT, 1948¹

(U. P. Act No. XXXII of 1948)

CONTENTS*Sections*

Preamble

CHAPTER I*Preliminary*

1. Short title, extent and commencement.
2. Repeal.
3. Definitions.

CHAPTER II*Extensions and Nayabad Grants*

- 4.
- 5.
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- 10.

CHAPTER III*Suits*

11. Suit to set aside orders sanctioning a grant.
12. Period of limitation for suits under Section 11.
13. Suits relating to tradition boundaries and casementary rights.

*Sections***CHAPTER IV***Jurisdiction and Procedure*

14. Jurisdiction of Revenue and Civil Courts.
- 15.
16. Application of Code of Civil Procedure.

CHAPTER V*Appeals and Revisions*

17. Appeals.
18. First appeal.
19. Second appeal.
20. Period of limitation of appeals.
21. Power of Board to call for records and revise orders.

CHAPTER VI*Miscellaneous*

22. Power to leave unmeasured land.
23. Penalty for illegal extensions and misuse of grants.
24. Penalty for disobedience of orders passed under Section 23.
25. Power to make rules.
26. Disposal of pending suits and proceedings.

Adapted and modified by the Adaptation of Laws Order, 1950

[Passed by the United Provinces Legislative Assembly on May 6, 1948, and by the United Provinces Legislative Council on May 10, 1948.]

¹ For S. O. R., see Gaz. Extra. d. May 6, 1948, pp. 1-5; for discussion, see L. A. Pro., d. May 6, 1948, in Vol. XLIX, pp. 301-314, d. Oct.

22, 1948, in Vol., L., p. 359, and L. C. Pro., d. May 8 and 10, 1948, in Vol. XI, pp. 632 and 745-753, d. Nov. 4, 1948, in Vol. XII, p. 21.

(Received the assent of the Governor on July 4, 1948, under Section 75 of the Government of India Act, 1935, as adapted by the India (Provisional Constitution) Order, 1947 and was published¹ in the United Provinces Government Gazette, dated July 31, 1948.)

An Act

to regulate the Nayabad and Waste Land Grants in hill pattis of the Kumaun Division

Preamble.—Whereas it is expedient to amend the law relating to the cultivation and use of unmeasured lands in the hill pattis of the Kumaun Division ;

It is hereby enacted as follows :—

CHAPTER I

Preliminary

1. Short title, extent and commencement.—(1) This Act may be called “the Kumaun Nayabad and Waste Lands Act, 1948.”

(2) It extends² to the hill pattis of the Kumaun Division, except land situate within the limits of any municipality, notified area or town area.

(3) It shall come into force at once.

2. Repeal.—The Kumaun Nayabad and Waste Land Rules published with Government notification No. 612/XIV—312(24), dated August 1, 1934, as subsequently amended, and the provisions of the Indian Forest Act, 1927, in so far as they are inconsistent with the provisions of this Act are hereby repealed.

3. Definitions.—In this Act, unless there is anything repugnant in the subject or context—

(1) “Board”, “Assistant Collector incharge of a sub-division” and “Assistant Collector, first class” shall have the same meaning as in the Land Revenue Act, 1901, as modified for Kumaun and “Deputy Commissioner” and “Deputy Commissioner-incharge, Kumaun Division” shall have the same meaning as “Collector” and “Commissioner,” respectively, in that Act ;

(2) “extension” means a contiguous addition to existing cultivation ;

(3) “Nayabad grant” or “grant” means a grant of unmeasured land made in accordance with the provisions of this Act ;

(4) “old reserves”, “class II forests” and “class I forests” mean forests constituted under Chapter II of the Indian Forests Act, 1927 ;

(5) “panchayat forest” means a forest constituted under the Panchayat Forest Rules applicable to Kumaun ;

(6) “prescribed” means prescribed by this Act or by rules made thereunder ;

(7) “protected trees” means the trees the felling or lopping of which is prohibited in accordance with the rules framed from time to time under the Indian Forests Act, 1927 ;

2. See Gaz. d. July, 31, 1948, Pt. VII A, pp. 55—58.

3. This Act has been extended to Tehri-Garhwal by Tehri-Garhwal

(Application of Laws) Order, 1949, with effect from June 1, 1950, vide not. no. 1669/XVII—Merge, d. May 25, 1950. Pt. I, p. 328.

(8) "public path" means a path which, though recorded or not in settlement papers, is recognized and is used as such by the inhabitants of the locality ;

(9) "settlement path" means a path recorded as such in the records of the settlement, for the time being in force ;

(10) "traditional boundary" means the boundary of a village defined at Mr. Trail's Settlement of 1923 (*Sambat* 1880) or as established in 1939 (*Sambat* 1896) subject to any subsequent rectification by order of a Settlement or Record Officer or by a judicial decision ;

(11) "unmeasured land" means land which has not been measured and on which no land revenue has been assessed at the last settlement but includes land known as Kaiser-i-Hind land.

CHAPTER II

Extensions and Nayabad Grants

4. The breaking up of waste land for cultivation can be—

- (1) by extension, or
- (2) by a Nayabad grant.

5. Subject to the rules made under Section 25 every person cultivating land in Kumaun has a right to extend his cultivation over adjoining unmeasured land and the person so extending his cultivation shall possess the same rights over such extension as he has in his original cultivation :

Provided that no extension shall be made in a village—

- (i) in which 75 per cent. or more of the total culturable area has already been brought under cultivation ; or
- (ii) in respect of which the Deputy Commissioner-in-charge, Kumaun Division, has made a declaration prohibiting extensions without the written permission of the said officer.

6. Except in a village in which the making of grants has been prohibited by a declaration made by the Deputy Commissioner-in-charge, Kumaun Division, a Nayabad grant for cultivation or for planting a garden, or for the construction of buildings may, on application to the Assistant Collector incharge of the sub-division in which the grant is desired, be made by him in accordance with the rules made under Section 25.

7. No extension or grant shall—

- (i) encroach on—
 - (a) old reserves, class II, class I and *Panchayat* forests ;
 - (b) the traditional boundary of another village ;
 - (c) land lawfully in the possession or cultivation of another person ;
 - (d) any settlement or public path ; or
- (ii) otherwise interfere with the prescriptive or easement rights held by any person other than the person making the extension or obtaining the grant.

8. No grant or extension shall be made on the tops or steep sides of hills where erosion is likely to occur on account of the removal of forest growth, or on land on which *deodar*, cypress, walnut or other protected trees stand in such number as to make the grant or extension undesirable, nor shall grants ordinarily be made where the land to be granted or its immediate vicinity contains a large number of pine or oak trees.

9. No Nayabad grant or any portion thereof shall be transferred by the grantee to any person save with the prior sanction of the Deputy Commissioner who may accord such sanction only after satisfying himself that the reasons for the transfer of the whole or portion, as the case may be, warrant such transfer.

Explanation.—For the purposes of this section grantee includes persons claiming through or under him.

10. Nayabad grants may be made for the purposes of planting a garden but notwithstanding anything contained in Section 5 no extensions shall be made or allowed to be made by reason of the possession of any such grant.

CHAPTER III

Suits

11. Suit to set aside orders sanctioning a grant.—Where a grant has been sanctioned, any person aggrieved by the grant may file a suit in the appropriate civil court to set it aside on one or more of the following grounds, namely :—

- (a) that he has proprietary rights in the land included in the grant ;
- (b) that the grant would materially affect his prescriptive or easement rights or his extension ;
- (c) that the grant lies within the traditional boundary of his village and not within that of the grantee ;
- (d) that the grantee is not entitled to a grant under the rules prescribed for the purpose :

Provided that no suit shall lie in the case of grant sanctioned for a public purpose or for the construction of a building other than a building intended for agricultural purposes.

12. Period of limitation for suits under Section 11.—Notwithstanding anything contained in the Indian Limitation Act, 1908, the period of limitation for a suit under Section 11 shall be six months from the date on which the grants is sanctioned under Section 6.

13. Suits relating to tradition boundaries and easementary rights.—A suit may be filed in a civil court for a declaration or injunction or for both—

- (a) in respect of the traditional boundary of a village, or
- (b) in respect of easement rights in unmeasured land.

CHAPTER IV

Jurisdiction and Procedure

14. Jurisdiction of Revenue and Civil Courts.—Subject to the provisions contained in Chapter III, all proceedings under this Act and the rules made thereunder shall be heard and decided by Revenue Courts and no court other than a Revenue Court shall take cognizance of any such proceeding.

15. (1) (a) The Assistant Collector incharge of a sub-division may transfer any proceeding pending before him to the court of any Assistant Collector, first class, competent to try or dispose of the same.

(b) The Deputy Commissioner may, for sufficient reason transfer any proceeding or class of proceedings from the court of the Assistant Collector incharge of the sub-division to the court of an Assistant Collector, first class, or from the court of any Assistant Collector, first class, to

the court of any other Assistant Collector, first class, competent to try or dispose of the same :

Provided that no proceeding mentioned in this sub-section shall be transferred to a court that has its place of sitting outside the sub-division in which the proceeding was commenced.

(2) The Deputy Commissioner-in-charge, Kumaun Division, may, for sufficient reasons, transfer any appeal from the court of a Deputy Commissioner to the court of another Deputy Commissioner.

16. Application of Code of Civil Procedure.—The provisions of the Code of Civil Procedure, 1908, as modified in their application to the Kumaun Division, in so far as they are not inconsistent with the provisions of this Act shall apply to all suits and proceedings under this Act or the rules made thereunder.

CHAPTER V

Appeals and Revisions

17. Appeals.—No appeal shall lie from any order passed by any Revenue Court under this Act except as provided in this Act.

18. First appeal.—An appeal shall lie to the Deputy Commissioner from all orders passed under any of the provisions of this Act by an Assistant Collector in-charge of a sub-division or an Assistant Collector of the first class.

19. Second appeal.—A second appeal shall lie to the Deputy Commissioner-in-charge, Kumaun Division, from an appellate order of the Deputy Commissioner under Section 18 on any of the grounds specified in Section 100 of the Code of Civil Procedure, 1908.

20. Period of limitation of appeals.—(1) No appeal to the Deputy Commissioner shall be brought after the expiry of thirty days from the date of the order complained of.

(2) No second appeal to the Deputy Commissioner-in-charge, Kumaun Division, shall be brought after the expiry of sixty days from the date of the order appealed against.

21. Power of Board to call for records and revise orders.—The Board may, on the application of a party or of its own motion, call for the record of any proceeding decided by a subordinate Revenue Court under this Act and if such court appears to have exercised a jurisdiction not vested in it by law, or to have failed to exercise a jurisdiction so vested or to have acted in the exercise of its jurisdiction illegally or with material irregularity the Board may pass such order in the case as it thinks fit.

CHAPTER VI

Miscellaneous

22. Power to leave unmeasured land.—Nothing contained in this Act shall prevent the Deputy Commissioner from giving unmeasured land on lease subject to rules in that behalf made under Section 25.

23. Penalty for illegal extensions and misuse of grants.—(1) When an extension has been made or a grant has been used contrary to the provisions of this Act or of the rules framed thereunder, the Assistant Collector in-charge of the sub-division may, on the application of any party or of his own motion, proceed against persons liable for the contravention in any one or more of the following manners :

(a) Order evacuation of the extension or grant, or

- (b) recover the cost of evacuation or removal of extension from the person concerned, if the evacuation of the persons or removal of extension has been made at the cost of Government, or
 - (c) forbid the use of the land in future by the person who has made the illegal extension or misused the grant, or
 - (d) levy the cost of any tree felled or produce extracted from the trees together with compensation not exceeding Rs. 100.
- (2) If the Assistant Collector incharge of the sub-division orders evacuation or forbids the use of the land under clauses (a), (b) or (c) of sub-section (1) he shall forward the case to the Deputy Commissioner of the district for the cancellation of the grant.
- (3) Any amount levied under clause (d), of sub-section (1) shall be recoverable as an arrear of land revenue.

24. Penalty for disobedience of orders passed under Section 23.—Any person disobeying an order passed under clause (a) or (c) of sub-section (1) of Section 23 shall be liable to prosecution and shall, on conviction, be punishable with a fine not exceeding five hundred rupees.

25. Power to make rules.—The [State Government]¹ may, after previous publication, make rules² consistent with this Act—

- (1) prescribing the extent to and the circumstances in which and the restrictions subject to which extension may be made ;
- (2) prescribing the manner in which the person to whom and the conditions subject to which, Nayabad grants may be made ;
- (3) for the lease of unmeasured land for non-agricultural purposes ; and
- (4) for generally giving effect to the provisions of this Act.

26. Disposal of pending suits and proceedings.—A suit or proceeding under any of the provisions of the Kumaun Nayabad and Waste Land Rules which were in force immediately before the commencement of this Act shall be decided in accordance with the corresponding provisions of this Act and, if there is no corresponding provisions the suit shall be dismissed or the proceedings quashed.

U. P. LAND ACQUISITION (REHABILITATION OF REFUGEES) ACT, 1948

(U. P. ACT XXVI OF 1948)

CONTENTS

Sections

1. Short title, extent and commencement.
2. Definitions.
3. Procedure of requisition.
4. Use of requisitioned land.
5. Application for requisition by a builder.
6. Declaration of State Government on an application by a builder.

Sections

7. Acquisition of land after execution of agreement under Section 6.
- 8.
9. Acquisition of land.
10. Payments of compensation.
- 11.
12. Release from requisition.
13. Court not to question any order passed under the Act.

1. Subs. by the A. O. 1950 for [Provl. Govt.].
2. For rules, see not. no. 3540/XIV—115-A F-44, dated February 2, 1949, in Gaz., dated February 12, 1949,

Pt. I-A. pp. 50—53, not. no- 4433/XIV—354, dated February 12, 1951, Pt. I-A, p. 97, and no. 1570/XIV—201-A. F.-46, dated September 24, 1951, Pt. I-A, p. 621,

14. Protection of persons acting under the Act. 15. Rule making power.

(As modified and adopted upto 1956)

[Received the assent of the Governor on May 19, 1948 and was published in U. P. Gazette, dated June 5, 1948]

An Act to provide for the acquisition of land for the rehabilitation of refugees from Pakistan

Whereas it is expedient to acquire land required for the rehabilitation of refugees from * * * Pakistan and to prescribe an expeditious procedure for the determination of compensation to be paid on account of such acquisition ;

It is hereby enacted as follows :

Prefatory Note :—The following extract from the Statement of Objects and Reasons may be usefully noticed :—

"In consequence of the large influx of refugees displaced from the urban areas in Pakistan, it has become urgently necessary to obtain powers for Government so as to ensure at short notice and fair price, procurement of lands required for refugee rehabilitation" vide U. P. Gazette extraordinary dated April 23, 1948.

1. Short title, extent and commencement.—(1) This Act may be called the Uttar Pradesh Land Acquisition (Rehabilitation of Refugees) Act, 1948.

(2) It shall extend to the whole of the Uttar Pradesh.

(3) It shall come into force at once.

Legislative changes :—The words (Uttar Pradesh) and (State) were substituted for the words 'United Provinces' and 'Provincial' by A. O. 1950 throughout the Act.

(2) The word "West" occurring before the word "Pakistan" in the long title of the Act and in the "preamble" was deleted by notification No. 1600 (1) XVII dated June, 9, 1948, published in U. P. Gazette dated June, 12, 1948 (Pt. VII-A, p. 47).

2. Definitions.—In this Act unless there is anything repugnant in the subject or context—

- (i) "Compensation Officer" means the Compensation Officer appointed by general or special order by the State Government ;
- (ii) "Court" means the principal Civil Court of original jurisdiction and includes a Civil Judge having jurisdiction in the area ;
- (iii) "land" includes benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth ;
- (iv) "person interested" has the meaning assigned to it in Section 3 of the Land Acquisition Act, 1894 ;
- (v) "Prescribed" means prescribed by the rules made under this Act ;
- (vi) "State Government" means the Government of the Uttar Pradesh ;
- [(vii) "refugee" means any person who was a resident in any place forming part of Pakistan and who, on account of partition or civil disturbances or the fear of such disturbance, has on or after the first day of March, 1947, migrated to any place in the U. P. and has been since residing there].
- (viii) "builder" means a society registered under the Co-operative Societies Act, 1912, or [the local authority] and includes

such other person as the State Government may, by notification in the Gazette, declare in that behalf.

Legislative changes:—Clause (vii) was substituted by S. 2 of U. P. Act XVI of 1950. In Cl. (viii) the words "or the local authority" were inserted between the figures and words '1912' and 'and' by Notification No. 1600 (1) XVII dated June 9, 1948 published in U. P. Gazette dated June, 12, 1948, Pt. VII-A, p. 47.

Builder.—An Improvement Trust, can be a "builder" for the purpose of the Act, if a notification to that effect has been issued by the State Government.^{99a}

3. Procedure of requisition.—If, in the opinion of the State Government or such other authority as the State Government may appoint in that behalf (hereinafter called "the appointed authority"), it is necessary or expedient so to do for the erection of [houses, shops and workshops] for the rehabilitation of refugees, the State Government or the appointed authority, as the case may be, may by order requisition any land by serving on the owner and occupier thereof, and, when the owner or the occupier is not readily traceable or the ownership or the right to occupation of the land is in dispute, or owing to the number of persons entitled as owner or occupier it is not reasonably convenient to serve everyone of them separately, by publishing in such manner as may be specified in that behalf, a notice stating that the State Government or the appointing authority, as the case may be, has decided to requisition it in pursuance of this section and may make such further orders including an order for the taking of possession as appear to it to be necessary or expedient in connexion with the requisitioning.

Legislative changes:—The words in brackets were subs. by Notification No. 1600 (1) XVII dated June 9, 1948, published in U. P. Gazette dated June 12, 1948 Pt. VII-A, p. 47.

4. Use of requisitioned land.—Where any land has been requisitioned under Section 3, the State Government or such other persons as may be authorised in that behalf may use it, in such manner as may appear to it to be expedient, for the purpose of erecting [houses, shops and workshops] for the rehabilitation of refugees, [and providing other amenities].

Legislative changes:—The words between "erecting" and "for" were subs. and the words in brackets at the end were added by notification No. 1600 (1) XVII dated June 9, 1948, published in U. P. Gazette dated June 12, 1948, Pt. VII-A, p. 47.

5. Application for requisition by a builder.—A builder may in the prescribed manner apply to the State Government to acquire any land, as may be specified in the application, for the purpose of erecting [buildings, shops and workshops] for the rehabilitation of refugees for providing amenities connected therewith.

Legislative changes:—The words in brackets were subs. by Notification No. 1600 (1) XVII dated June 9, 1948, published in U. P. Gazette dated June 12, 1948, Pt. VII-A, p. 47.

6. Declaration of State Government on an application by a builder.—(1) Whenever the State Government is satisfied after such inquiry as it may consider necessary that the land is needed and is suitable for the erection of [houses, shops and workshops] for the rehabilitation of refugees or for the provision of amenities directly connected therewith, the State Government, or the appointed authority, shall require the builder to enter into an agreement with the State Government, providing to the satisfaction of the State Government, for the following matters; viz:

- (i) the payment to the State Government of the cost of acquisition,

- (ii) the transfer on such payment of the land to the builder,
- (iii) the terms on which the land shall be held by the builder,
- (iv) the time within which the condition on which and the manner in which the [houses, shops and workshops] shall be erected, [workshops started and amenities provided,]
- (v) the disposal by sale, exchange, lease or otherwise of the land acquired or of the building erected thereon,
- (vi) water supply, lighting, drainage inclusive of sewerage and surface drains, and sewage disposal,
- (vii) housing standard and location of market places and other places for common use of the residents in the area acquired,
- (viii) resumption, with or without the constructions and the penalty which may be imposed on the builder and the manner in which it may be enforced, and
- (ix) generally for such other matters as the State Government may prescribe.

(2) Every such agreement shall, as soon as may be after its execution, be published in the official Gazette and shall thereupon have the same effect as if it had formed part of this Act.

Legislative changes :—In clause (iv) the words in brackets were substituted by Notification No. 600 (1) XVII dated June 9, 1948, published in U. P. Gazette dated June 12, 1948 pt. VII-A, p. 47.

7. Acquisition of land after execution of agreement under Section 6.—(1) After the agreement mentioned in Section 6 has been made and the builder has deposited such amount as the State Government may direct, the State Government or the appointed authority may acquire the land by publishing in the official Gazette a notice to the effect that it has decided to acquire such land, and may make such further order including an order for the taking of possession, as appear to it to be necessary or expedient in connexion with the acquisition.

(2) Upon the publication of notice under sub-section (1) the land acquired shall vest absolutely in the State Government from the beginning of the day on which the notice is so published and all other provisions of the Act in so far as they are applicable, shall apply as if it had been acquired under the next following section.

8. (1) The State Government, or the appointed authority, may with a view to requisitioning any land under Section 3, or acquiring it under Section 7, or determining the compensation under Sections 10 and 11, by order—

- (a) require any person to furnish to such authority as may be specified in the order, such information in his possession relating to the property as may be so specified, [in the said order].
- (b) direct that the owner or the occupier or person in possession of the land shall not, without the permission of the authority making the order, dispose of it till expiry of such period as may be specified in the order.

(2) Without prejudice to the powers conferred by sub-section (1); any person or authority appointed in this behalf by the State Government may enter any land and inspect it for the purpose of determining whether, and if so in what manner, an order under Section 3 or 7 should be made in relation to such land, or with a view to securing compliance with any order made under the said sections.

Legislative changes:—In clause (a) of sub-section (i) the words in brackets were substituted by Notification No. 1600 (1) XVII dated June 9, 1948, published in U. P. Gazette dated June 12, 1948 pt. VII-A, p. 47.

9. Acquisition of land.—(1) Where any land has been requisitioned under Section 3, the State Government may at any time, acquire it by publishing in the official Gazette, a notice to the effect that it has decided to acquire it in pursuance of this section.

(2) Where a notice as aforesaid is published in the official Gazette, the requisitioned land shall, from the beginning of the day on which the notice is so published, vest absolutely in the State Government free from all encumbrances and the period of requisitioning of such land shall end forthwith.

10. Payments of compensation.—(1) Where any land is requisitioned under Section 3 there shall be paid to every person interested, such compensation as may be agreed upon in writing between such person and the State Government or the appointed authority, in respect of—

(a) the requisition of such land, and

(b) any damage done during the period of requisitioning to such land other than that which may have been sustained by any natural causes.

(2) Where no such agreement can be reached the State Government or appointed authority shall refer the matter with its recommendation, as to the amount of compensation and the reasons therefor, to the Compensation Officer and also, direct the person claiming compensation to appear before such officer on such date as may be specified.

(3) Upon the receipt of any reference under sub-section (2), the Compensation Officer shall, on the date fixed or on any other date to which the hearing may be postponed, hear such person and after such further inquiry as he may deem fit, determine the amount of compensation which shall be final and conclusive.

11. (1) Whenever any land is acquired under Section 7 or 9 there shall be paid compensation the amount of which shall be determined by the Compensation Officer in accordance with the principles set out in clauses first, second and third of sub-section (1) [and sub-section (2)] of Section 23 of the Land Acquisition Act, 1894.

Provided that the market value referred to in clause first of the said sub-section shall be deemed to be the market value of such land on the date of publication of the notice under Section 7 or 9, as the case may be, or on the first day of September, 1939, whichever is less :

Provided further that where such land has been held by the owner thereof under a purchase made before the first day of April, 1948, but after the first day of September, 1939, by a registered document [or a decree for pre-emption between the aforesaid dates, the compensation shall be the price actually paid by the purchaser or the amount on payment of which he may have acquired the land in the decree for pre-emption, as the case may be.]

(2) When the compensation has been determined under sub-section (1), the Compensation Officer shall make an award in accordance with the principles, in so far as they are not inconsistent with this Act or any rule made thereunder, set out in Section 11 of the Land Acquisition Act, 1894.

(3) Where any person aggrieved by an award made under sub-section (2) makes an application within the period prescribed requiring

the matter to be referred to the [District] Court, the Compensation Officer shall refer it to the decision of the Court having jurisdiction.

(4) The provisions of the Land Acquisition Act, 1894, shall, in so far as they are not inconsistent with the provisions of this Act, apply in respect of any reference made to the [District] Court under sub-section (3).

Legislative changes :—In sub-section (1) the word in brackets was inserted, the words in brackets in the second proviso to sub-section (1) were substituted, the words in brackets in sub-sections (3) and (4) were inserted and words after "sub-section (3)" at the end of sub-section (4) were deleted by Notification 1600 (I) XVII dated June 9, 1948, published in U. P. Gazette, dated June 12, 1948, pt. VII-A, p. 47.

Validity of the Act :—See *N. P. Khandewal v. State of U. P.* 1955 A 12=1954 A L J 673.

12. Release from requisition.—(1) Where any land requisitioned under Section 3 is not acquired and is to be released from requisitioning the State Government or the appointed authority, as the case may be, may, after making such inquiry, if any, as it considers necessary, specify by order in writing the person who appears to it to be entitled to the possession of such land.

(2) The delivery of possession of such land to the person specified in the order made under sub-section (1) shall be a full discharge of any liability of the State Government to deliver possession to such person as may have rightful claim to possession thereof but shall not prejudice any right in respect of such land which any other person may be entitled by due process of law to enforce against the person to whom possession of the land is so delivered.

(3) Where the person to whom the possession of any land requisitioned under Section 3 is to be delivered, cannot be found or is not readily traceable or has no agent or other person empowered to accept delivery on his behalf, the State Government shall publish in the official Gazette, a notice declaring that such land is released from requisitioning and shall cause a copy thereof to be affixed on some conspicuous part of such land.

(4) When a notice referred to in sub-section (3) is published in the official Gazette, the land specified in such notice shall cease to be subject to requisitioning from the date of such publication and shall be deemed to have been delivered to the person entitled to possession thereof.

(5) Upon delivery of possession under sub-section (2) or (4), the State Government shall not be liable for any compensation or other claims in respect of such land.

Legislative changes :—In sub-section (4) the words between "requisitioning" and "from" and words after "shall" and the end of sub-section (5) were deleted by Notification No. 1600 (I) XVII dated June 9, 1948 published in U. P. Gazette, dated June 12, 1948, pt. VII-A p. 47.

13. Court not to question any order passed under the Act.—(1) No order made in exercise of any power conferred by or under this Act shall be called in question in any Court except as provided in this Act.

(2) Where an order purports to have been made and signed by any authority in exercise of any power conferred under this Act, a Court shall within the meaning of Indian Evidence Act, 1872, presume that such order was so made by that authority.

14. Protection of person acting under the Act.—(1) Except as provided in this Act, no suit or other legal proceeding shall lie against any person for anything which is in good faith done or in-

tended to be done in pursuance of this Act or any rules or orders made thereunder.

(2) No suit or other legal proceeding shall lie against the State Government for any damage caused or likely to be caused by anything in good faith done or intended to be done in pursuance of this Act or any rule or order made thereunder.

15. Rule-making power.—(1) The State Government may make rules for the purpose of carrying into effect the provisions of this Act.

(2) Without prejudice to the generality of the foregoing power, such rules may provide—

- (a) for the appointment, functions and jurisdiction of Compensation Officers and other prescribed authorities ;
- (b) the conduct and hearing of references that may be made to Compensation Officer, and the procedure to be followed by such officer ;
- (c) the form of application to be made by builder for the acquisition of land ;
- (d) the form of notices to be given and the mode of their service ;
- (e) for any matter which is to be or may be prescribed.

**RULES FRAMED BY THE STATE GOVERNMENT UNDER
SECTION 15 OF THE UTTAR PRADESH LAND
ACQUISITION (REHABILITATION OF
REFUGEES) ACT NO. XXVI
OF 1948**

No. D-765/FGR—648—48.—In exercise of the powers conferred by Section 15 of the Uttar Pradesh Land Acquisition (Rehabilitation of Refugees) Act, 1948 (Act No. XXVI of 1948), the Governor is pleased to make the following rules, viz. :

CHAPTER I

Preliminary

1. Short title and commencement.—(i) These rules may be called the Uttar Pradesh Land Acquisition (Rehabilitation of Refugees) Rules, 1948.

(ii) They shall come into force at once.

2. Interpretations.—(i) In these rules, unless there is anything repugnant to the subject or context,—

(a) “Act” means the Uttar Pradesh Land Acquisition (Rehabilitation of Refugees) Act.

(b) “Compensation Officer” shall be—

(i) for purposes of Section 10, the Commissioner or Additional Commissioner of a division ;

(ii) for purposes of Section 11, the Collector and shall include an officer specially appointed under clause (c) of Section 3 of the Land Acquisition Act.

(c) “Section” means a section of the Act.

(ii) Every Collector shall be the “Appointing Authority” for the purposes of the Act within the area of his jurisdiction.

3. Selection of site.—(i) Before any land is approved for requisition or acquisition under the provisions of the Act, the authority making the order shall, as far as possible, avoid the taking of buildings

used for religious purposes or of monumental structures. The situation of the land, its nearness to educational, medical and other amenities, such as markets, parks, etc., shall be taken into consideration.

(ii) In the case of vacant land the authority mentioned in sub rule (1) shall cause the site plan to be prepared along with a schedule showing approximate area and its situation before requisition or acquisition is effected.

(iii) A preliminary estimate of the cost of requisition or acquisition of land, with reduction of land revenue, if any, as required under paragraph 414 of the Revenue Manual, shall be prepared.

CHAPTER II

Requisition and Acquisition Assessment and Payment of Compensation

4. Issue of notice.—Whenever it is decided to requisition any land under Section 3, the State Government or the appointed authority as the case may be, shall issue a notice in Form I/R.F.G. given in Appendix A to the owner and occupier of the land.

5. Acquisition of land under Sections 9 and 7 of the Act.—Under the Act land may be acquired in two ways :

(i) Where such land is already under requisition under Section 3, by publishing in the official *Gazette* a notice in Form No. II/R.F.G., 1948 (Appendix B).

(ii) Where such land is to be acquired under Section 7, by publishing in the official *Gazette*, a notice in Form III/R.F.G., 1948 (Appendix C) :

Provided that no land shall be acquired under Section 7, unless the builder has already executed an agreement mentioned in Section 6 and has also deposited the estimated cost of acquisition.

6. Assessment of compensation.—When any land is requisitioned or acquired under the provisions of the Act, the Collector or the Compensation Officer, as the case may be, shall determine the amount of compensation to be paid for the land and shall also apportion it, where necessary, among all the persons known or believed to be interested in the property, of whom or of whose claim to compensation he has information.

7. Notice of the amount of compensation.—The Collector or the Compensation Officer, as the case may be, shall give immediate notice of the amount of compensation determined by him under Rule 6, in Form VII (R.F.G.), Appendix G.

8. Payment of agreement.—Where the offer of the amount of compensation under Rule 7 is accepted, the Collector or the Compensation Officer shall, if necessary, enter into an agreement with the person or persons interested and pay the amount agreed upon.

9. Dispute in title to receive compensation.—In cases where the title to compensation is in dispute or cannot be readily ascertained e. g., when the land is the subject matter of a civil suit or there is a dispute as to the apportionment of compensation, the Collector in the case of land requisitioned under Section 3 or the Compensation Officer in the case of land acquired under Section 7 or 9, shall make public his assessment of compensation, deposit it under the head "Revenue Deposits" and declare that the amount is being deposited in the Treasury pending the establishment of a satisfactory title thereto.

10. Procedure when payment not accepted or accepted under protest.—In any case, where the offer made under Rule 7 is not accepted or is accepted under protest, the Collector or the Compensation Officer, as the case may be, shall report to the State Government the facts of the case including the particulars specified in Rules 12 and 13.

CHAPTER III

Reference to District Court

11. Reference to District Court.—A person interested who has not accepted the offer mentioned in Rule 7 may apply to the Compensation Officer, for reference to the District Court under sub-section (4) of Section 11 and thereupon the Compensation Officer shall forward the application to the District Court with a full report containing as nearly as may be, all the particulars mentioned in Rules 12 and 13, provided that every such application shall be made :

- (a) if the person making it was present or represented before the Compensation Officer at the time when he made his offer of compensation, within six weeks from the date of such offer, and
- (b) in other cases, within six weeks of receipt of notice from the Compensation Officer under Rule 7.

12. Compensation Officer's statement to the District Court.—In making the reference, the Compensation Officer shall state for the information of the District Court in writing together with the record of the case :

- (a) the situation, description and area of the land with particulars of any trees, buildings or standing crops thereon ;
- (b) the names of persons whom he has reason to believe to be interested in such land and the reasons for so believing ;
- (c) the amount of compensation determined by him ; and
- (d) the amount of compensation claimed by the objector or objectors on the ground on which such amount has been calculated.

13. To the said statement shall be attached a schedule giving the particulars of the notices served upon and of the statement in writing, if any, made or delivered by the persons interested.

14. Notice to parties by District Courts.—The District Courts shall thereupon cause to be served on the persons mentioned below a notice in Form IV (RFG) of Appendix D specifying the day on which the court shall proceed to determine the objection and directing such persons to appear before the Court on that day :

- (a) the applicant ;
- (b) all persons interested in the objection except such (if any) of them as have consented without protest to receive payment of the compensation offered by the Compensation Officer.
- (c) if the objection is in regard to the area of the land or to the amount of compensation, the Compensation Officer.

15. Proceedings in open court.—Every proceeding before the District Court shall take place in open court and all persons entitled to practise in the Civil Courts of the district shall be entitled to appear plead and act (as the case may be) in such proceedings.

16. Code of Civil Procedure and Indian Evidence Act to apply to proceedings before Court.—Save in so far as they may be inconsistent with anything contained in the Act and rules, the provisions of the Code of Civil Procedure, 1908 and the Indian Evidence Act, 1872, shall apply to all proceedings before the District Court under this Act.

17. Awards.—(i) After conducting such enquiry as the District Court may consider necessary, it shall make an award in writing specifying :

- (a) the correct area of the land ;
- (b) the amount of compensation separately under clauses first, second and third of sub-section (1) and sub-section (2) of Section 23 of the Land Acquisition Act ; and
- (c) apportionment of the compensation, giving grounds for the award.

(ii) Every such award shall be deemed to be a decree and the statement of grounds of every such award, a judgment within the meaning of clause (2) and clause (9) respectively of Section 2 of the Code of Civil Procedure 1908 (Act V of 1908) and the provisions of the Land Acquisition Act shall, *mutatis mutandis* apply to any such award as if it had been passed by district judge under Section 26 of the said Act.

CHAPTER IV

Procedure before Compensation Officer

18. References under Section 10, sub-section (2)—In any reference made under sub-section (2) of Section 10 the Compensation Officer shall on the date fixed or on a date to which the hearing may be adjourned hear the parties who may like to be heard and also their witnesses, as may appear to him to be necessary for deciding the reference.

19. For purposes of rule 18 the Compensation Officer shall be deemed to be a Court and have all such powers, rights and privileges as a Court has in respect of the following matters :

- (a) the enforcing of the attendance of witnesses and examining them on oath or solemn affirmation and otherwise and the issue of a commission for the examination of witnesses ;
- (b) the compelling of the production of documents and the punishment of persons guilty of contempt.

20. Procedure to be adopted by Compensation Officer for acquisition of land.—In assessing the amount of compensation under sub-section (1) of Section 11 the Compensation Officer shall follow the principles in so far as they are not inconsistent with the provisions of the Act or these rules, laid down in Chapters XIV and XV of the Manual of Orders of the Government of Uttar Pradesh in Revenue Department, Volume I.

CHAPTER V

Miscellaneous

21. Service of notices.—The notices issued under these rules shall be served in one or more of the following modes, *viz.*, by :

- (i) serving on every person interested in the land ;
- (ii) posting on the notice board of Collector's Court ;
- (iii) affixing on some conspicuous part of the land ;

(iv) announcing by beat of drum in the locality and publishing them in any local paper or in the official *Gazette* of the State.

22. Exemption from stamp duty and fees.—No award made under this Act shall be chargeable with stamp duty, and no person claiming under any such award shall be liable to pay any fees for a copy of the same.

APPENDIX "A"

Land Acquisition Form No. 1—(R. F. G.), 1948

Notice under Section 3 of the Uttar Pradesh Land Acquisition (Rehabilitation of Refugees) Act No. XXVI of 1948 to the owner/occupier of the land.

To....., son of.....
caste.....—....., profession.....
residing at.....

Whereas the Government of the Uttar Pradesh/the appointed authority have/has decided to requisition the land designated below under Section 3 of the Uttar Pradesh Land Acquisition (Rehabilitation of Refugees) Act No. XXVI of 1948 this is to give you notice of the said decision and that you or any other person interested in the land are required to appear personally or by duly authorised agent before the Collector of the district at.....on the.....day of.....1948, with necessary documentary and other evidence for determination of the amount of compensation under Section 10 of the Act.

It is further declared that the appointed authority shall take possession of the land in question fourteen days after the publication of this notice.

SCHEDULE

District	Pargana	Mauza, Municipality, Cantonment Town area or Notified Area	Area in acres	For what purpose required	Remarks

Seal of the
Court and date

Signature

APPENDIX "B"

Land Acquisition Form No. II (R. F. G.), 1948

Notice under Section 9 of the Uttar Pradesh Land Acquisition (Rehabilitation of Refugees) Act No. XXVI of 1948.

No..... Dated, Lucknow,.....195 .

Under sub-section (1) Section 9 of the Uttar Pradesh Land Acquisition (Rehabilitation of Refugees) Act No. XXVI of 1948, the Governor is pleased to notify that whereas it has been so decided she does hereby acquire under the said sub-section the land already requisitioned under Section 3 of the aforesaid Act under order no.....

dated.....mentioned in the schedule annexed hereto together with any benefit to arise out of the land and things attached to the earth or permanently fastened to anything attached to the earth.

It is also ordered that under Section 9 (2) of the Act this notice will be served on the persons interested by publishing it in the official *Gazette* and that at the beginning of the day on which the notice is so published the requisitioned lands shall vest absolutely in the State Government free from all encumbrances and the period of requisition of such land shall end forthwith.

All the persons interested in the land are required to appear personally or by duly authorised agent before the Compensation Officer of the district at.....on the.....day of.....1948 with necessary documentary and other evidence for determination of amount of compensation under Section 2 of the Act.

SCHEDULE

District	Pargana	Mauza, Municipality, Cantonment, Town Area or Notified Area	Area in acres	For what purpose required	Remarks

Note.—A copy of the site-plan may be inspected at the office of the Collector.

APPENDIX "C"

Land Acquisition Form No. III (R. F. G.), 1948

Notice under Section 7 of the Uttar Pradesh Land Acquisition (Rehabilitation of Refugees) Act No. XXVI of 1948

Under sub-section (1) of Section 7 of the Uttar Pradesh Land Acquisition (Rehabilitation of Refugees) Act No. XXVI of 1948, the Governor of the Uttar Pradesh/the appointed authority is pleased to declare that she is satisfied that the land mentioned in the schedule is needed and is suitable for the erection of houses, shops and workshops for the rehabilitation of refugees and/or for the provision of amenities directly connected therewith.

All the persons interested in the land in question are therefore required to appear personally or by duly authorised agent before the Compensation Officer of the district at.....on the.....day of.....1948 with necessary documentary or other evidence for determination of the amount of compensation under Section 11 of the Act.

The Collector of.....is directed to take possession of the aforesaid land fourteen days after the publication of this notice in the official *Gazette*.

Upon the publication of this notice the aforesaid land shall be deemed to have been acquired permanently and shall vest absolutely in the State Government free from all encumbrances from the beginning of the day on which the notice is so published.

SCHEDULE

District	Pargana	Mauza, Municipality, Cantonment, area Town Area or Notified Area	Area in Acres	For what purpose required	Remarks
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Note.—A copy of the site-plan may be inspected at the office of the Collector.

Secretary.

APPENDIX "D"

Land Acquisition Form No. IV (R. F. G.) 1948

Form of notice under rule 14 of the Uttar Pradesh Land Acquisition (Rehabilitation of Refugees) Act No. XXVI of 1948

To..... son of Caste.....
..... Profession..... residing at.....

Whereas you have refused to accept or have accepted under protest the compensation offered to you by the Compensation Officer in respect of the land designated below this is to give you notice that you are required to appear personally or through a duly authorised agent in the District Court (the Court of.....) at..... on the..... day of..... 1948 when the compensation payable to you shall be determined. You must bring all the evidence in support of your claim with you on the aforesaid date.

District	Pargana	Mauza, Municipality, Cantonment, area Town Area or Notified Area	Area in Acres	For what purpose required	Remarks

*Seal of the Court
and date.*

Signature

APPENDIX "E"

Land Acquisition Form No. V (R. F. G.) 1948

Form of application under Section 5 of the Uttar Pradesh Land Acquisition (Rehabilitation of Refugees) Act No. XXVI of 1948

To

*The Secretary, Refugees Department,
Government of the Uttar Pradesh, Lucknow.*

Sir,

There are about..... registered refugee families yet to be re-

settled in.....district. Of them.....families are willing and prepared to settle in the locality herein proposed for acquisition. The family heads have decided to settle in the said locality after full consideration of the prospects of the means of livelihood they propose to adopt.

2. I am prepared to build.....and I am prepared to enter into an agreement acceptable to Government as provided by Section 6 of the Act.

3. Whole part of the land proposed for acquisition is :

(1) Not being utilised in any way.

(2) Being utilized in the following manner :

4. I have satisfied myself that the details furnished in the statement given below are correct to the best of my knowledge.

5. A site-plan showing the location of land is enclosed herewith.

District	Pargana	Mauza, Municipality, Cantonment, Town Area or Notified area	Area in acres to be acquired for			Remarks
			Residential houses	Shops	Factories etc.	
						As to how expenses and materials for construction are proposed to be managed.

*Signature of applicant
with designation and address.*

APPENDIX "F"

*The Uttar Pradesh Land Acquisition (Rehabilitation of Refugees)
Act No. XXVI of 1948*

(Form of agreement under Section 6 of the Act)

Form No. VI (RFG) 1948

An agreement made the.....day of.....19.. between the Governor of the Uttar Pradesh (hereinafter called "the Governor") of the one part.

And.....*a Society registered under the Co-operative Societies Act, 1916, having its registered office at.....of the other part.

Whereas the aforesaid.....has made an application to the Government of the Uttar Pradesh (hereinafter called "the State Government") to acquire for the purposes of rehabilitation of refugees under the provisions of the Uttar Pradesh Land Acquisition (Rehabilitation of Refugees) Act, No. XXVI of 1948, the land described in Schedule I hereto and delineated on the plan annexed hereto.

And whereas the State Government is satisfied that the aforesaid.....(hereinafter called "the Nirmankarta") is a Nirmankarta within the meaning of Section 6 of the said Act ;

And whereas the State Government after making and holding such inquiry as is required and prescribed by law, is satisfied that the acquisition of the said land is needed for the construction of

(described in detail in Schedule II hereto annexed) and that such work is likely to prove useful for the rehabilitation of refugees;

And whereas under Section 6 (1) of the said Act it is necessary that the Nirmankarta should enter into an agreement with the Governor regarding the matters specified in the said section;

Now therefore it is hereby agreed and declared as follows :

(1) That the Nirmankarta will pay to the State Government or such person or persons as the State Government may appoint in this behalf all such sums of money as shall be awarded under the provisions of the said Act, as compensation to any person or persons who may be found on inquiry held under the provisions thereof to be interested in the said lands ;

(2) That the Nirmankarta will pay to the State Government from its funds all such other charges as may be incidental to the acquisition of the said land under the provisions of the said Act.

(3) That upon the Nirmankarta having made all payments incidental to the acquisition of such land as mentioned in clauses (1) and (2) hereof, the Governor will forthwith, in consideration of the payment of such compensation money and cost of the acquisition convey and grant to Nirmankarta the said land described in Schedule I hereto to hold the same to the said Nirmankarta for ever subject to the conditions hereinafter set forth, namely :

(a) That the Nirmankarta, its successors and permitted assignees will use the said land for the aforesaid purpose of rehabilitation of refugees and for no other purpose, and shall not sell, mortgage, exchange, lease or otherwise transfer the said land or the buildings constructed thereon or any part thereof without the previous sanction in writing of the State Government which, while granting such permission may impose such conditions, restrictions and qualifications as may appear to it necessary and expedient in the circumstances of a particular case;

(b) That the Nirmankarta shall within one year of being put in possession of the said land erect and complete all work in accordance with the particulars specified in Schedule II annexed hereto under the supervision of the Collector of the district concerned or an officer authorised by him in this behalf. The Collector shall make periodical report to the State Government on the progress of the work and on the amount of money spent progressively on the work. If at any time the State Government consider that the progress of the work is not satisfactory or that an adequate proportion of the total estimated cost of the work as specified in Schedule II has not been spent on the work, the State Government shall be entitled to order that for the purposes of clause (3) (g) following there has been a breach of the terms and conditions of this agreement (such order shall be final and binding on the Nirmankarta);

(c) That the public will have such right of access to and use of the land and works hereinbefore specified as may be necessary for the transaction of their business with the owners and occupiers thereof;

- (d) That, if at any time or times any part or parts of the said land shall be necessary to be possessed by the State Government for the purpose of revenue administration or for purposes connected with the public health, safety or necessity (of which matter the State Government shall be the sole judge) the Nirmankarta shall, on being thereunto required by the State Government transfer to the Governor such part or parts of the said land as the State Government shall specify to be necessary for the purposes aforesaid and in consideration of such transfer the Governor shall pay to the Nirmankarta a sum equal to the amount of compensation awarded under the said Act and paid by the Nirmankarta in respect of such part or parts together with compensation for the buildings erected on such part or parts at valuation to be determined by mutual agreement, failing which the compensation will be determined by the District Judge of. An appeal from the decision of the District Judge shall lie to the High Court and the decision of the District Judge or where an appeal has been preferred against such decision, the decision of the High Court determining such valuation as aforesaid, shall be final, conclusive and binding on the Nirmankarta.
- (e) That if the land or any part or parts thereof shall no longer be required by the Nirmankarta for the purpose aforesaid then the Nirmankarta will forthwith relinquish and restore the same with buildings and structures to the Governor at a price equal to the amount paid by it under the said Act and for the buildings and structures such other compensation as the State Government or any officer appointed for the purpose may determine.
- (f) That the State Government shall on the expiration of thirty years from the date of this agreement and of every such subsequent years not exceeding ten years have the option of purchasing the works and if the State Government so elects to purchase, the Nirmankarta shall sell the works to the State Government on payment of a price equal to the amount of the compensation paid by the Nirmankarta for the land under the said Act together with the price of structures standing thereon at the date of purchase, the price to be determined in accordance with the procedure contained in clause 3 (d) hercof ;
- (g) That in the case of a breach by the Nirmankarta of any of the terms and conditions of this agreement, the Governor shall be entitled to re-enter on the whole of the said land without payment of any compensation to the Nirmankarta and upon such re-entry the interest of the Nirmankarta in the said land shall cease and determine;
- That in the event of re-entry by the Government under this clause the Nirmankarta shall be entitled to remove within six months from the date of such entry all buildings and structures, on the said land, provided that all buildings, and structures not removed within the period aforesaid shall vest absolutely in the Governor and all rights of the Nirmankarta shall cease in respect of such buildings and structures without any compensation ;

- (h) That, should any dispute or difference arise touching or concerning the subject-matter of this agreement or any covenant or clause or things therein contained other than a dispute or difference as to the valuation of the buildings determined or to be determined under the provisions of clause (d) above, the same shall be referred to the Secretary to the State Government in the Judicial Department, whose opinion and decision on such dispute or difference shall be final and conclusive and binding on the parties hereto.

In witness whereof.....for and on behalf of the Governor andfor and on behalf of the Nirmankarta have signed this deed on the day and years first above written.

SCHEDULE I

Name of mohal, Mauza, pargana, tahsil and district of the name of Municipality, Cantonment, Town Area of Notified Area.	Plot no.	Area in acres	Boundaries
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SCHEDULE II

- (1) Name and nature of the works.
- (2) Plans and specifications.
- (a) Standard of buildings and the rent to be charged therefor.
- (b) Purpose for which to be used.
- (c) Location of markets places and other places for common use of the residents in the area.
- (d) Workshops and amenities to be provided.
- (e) Arrangements for water supply, lighting, drainage inclusive of sewerage and surface drains and sewage disposal.
- (f) The rights and privileges of the occupiers of the work or any portion thereof.
- (g) *
- (h) *
- (3) Minimum expenditure to be incurred separately on each of the above items in the construction of the works.
- (4) Any other direction.

Signed by :

For and on behalf of the Governor.

Witnesses :

- (1)
- (2)

Signed by :

For and behalf of the Nirmankarta.

Witnesses :

- (1)
- (2)

*To be added if any other particulars are required.

APPENDIX "G"

LAND ACQUISITION FORM No. VII (REG) 1948

Notice under rule 7 of the Uttar Pradesh Land Acquisition (Rehabilitation of Refugees) Rules, 1948.

Notification no.....Dated Lucknow , 195 .
 Case No.....relating to land requisitioned /acquired
 in mauza.....Pargana.....Tahsil.....
 District.....for.....
 Serial no..... in statement no.....
 Dated.....
 To.....son of.....caste.....
 residence.....
 Profession.....
 present address

Whereas a sum of Rs.....is offered to you as compensation for the requisition of the land/your rights and interests in the land, etc., acquired, you are required to attend personally or by a duly authorised agent on or before theday of.....195.... at.....to receive payment of the amount.

In the event of your failure to do so, the amount (if it is Rs. 50, or under) will be remitted to you by money order, the money order fee being deducted from the amount/and in the case of sums of over Rs. 50 or of compensation of land owned jointly by several proprietors, which it is not possible to disburse separately, the amount due will, after the above date, be paid into the.....treasury as a revenue deposit payable to you on application to the undersigned.

In you fail to apply for the same within one year (in case of deposit not exceeding Re. 1) within three years (in other cases), the amount will lapse to Government.

Note.—No interest is allowed after the date fixed for payment.

THE LAND ACQUISITION (U. P. AMENDMENT) ACT, 1954¹

(U. P. Act No. XXII of 1954)

CONTENTS

Sections

1. Short title and commencement.
2. Amendment of Act I of 1894 in its application to Uttar Pradesh.
3. Savings.

SCHEDULE

1. Amendment of Section 3 of Act I of 1894.
2. Amendment of Section 4 of Act I of 1894.
3. Amendment of Section 5-A of Act I of 1894.
4. Amendment of Section 12 of Act I

Sections

- of 1894.
5. Insertion of a new Section 12-A in Act I of 1894.
6. Amendment of Section 17 of Act I of 1894.
7. Amendment of Section 18 of Act I of 1894.
8. Amendment of Section 23 of Act I of 1894.
9. Amendment of Section 25 of Act I of 1894.
10. Amendment of Section 39 of Act I of 1894.

1. For S. O. R., see *Gazette Extraordinary*, dated March 29, 1954, for discussion, see L. A. Pro., dated March 25, 1954, in Vol. CXXXII, p. 290, dated March 31, 1954, in

Vol. CXXXIII, p. 183—229, and L. C. Pro., dated August 30, 31, 1954, in Vol. XXXVI, p. 21, 96—108, dated September 1, 1954, in Vol. XXVI, p. 134—153.

(As passed by the U. P. Legislature)

AN ACT
to amend the Land Acquisition Act, 1894, in its application to Uttar Pradesh for
certain purposes

Whereas it is expedient to amend the Land Acquisition Act, 1894 in its application to Uttar Pradesh for the purposes hereinafter appearing.

It is hereby enacted as follows :

1. Short title and commencement.—(1) This Act may be called the Land Acquisition (U. P. Amendment) Act, 1954.

(2) It shall come into force at once.

2. Amendment of Act I of 1894 in its application to Uttar Pradesh.—In its application to Uttar Pradesh the Land Acquisition Act, 1894 (hereinafter referred to as the Principal Act) shall, in so far as it relates to acquisitions of land except for the purposes of the Union, have effect subject to the amendments specified in the schedule.

3. Savings.—Notwithstanding anything contained in Section 2, Section 23 of the Principal Act, shall, in respect of any acquisition of land made in pursuance of notification under Section 4 of the said Act issued prior to the commencement of this Act, have effect as if sub-section (2) thereof had not been omitted.

SCHEDULE

(SECTION 2)

Amendments to the Land Acquisition Act, 1894

1. Amendment of Section 3 of Act I of 1894.—In Section 3 of the Land Acquisition Act, 1894 (hereinafter referred to as the Principal Act)—

(1) for clause (f) the following shall be substituted—

“(f) the expression ‘public purpose’ includes provision for or in connexion with—

(i) sanitary improvements of any kind including reclamation ;

(ii) the laying out of village sites, townships or the extension, planned development or improvement of existing village sites or townships ;

(iii) the settlement of land for agriculture with the weaker section of the people ; and ’ and

(2) after clause (g) the following shall be added as a new clause (h)—

“(h) ‘Land Reforms Commissioner’ means the Land Reforms Commissioner appointed by the State Government.”

2. Amendment of Section 4 of Act I of 1894.—In Section 4 of the Principal Act—

(1) in sub-section (1) after the word “Government” the words “or Collector” shall be added ; and

(2) in sub-section (2) after the words “such Government” the words “or Collector” shall be added.

3. Amendment of Section 5-A of Act I of 1894.—In sub-section (1) of Section 5-A of the Principal Act for the words “thirty days” the words “twenty-one days” shall be substituted.

4. Amendment Section 12 of Act I of 1894.—In sub-section (2) of Section 12 of the Principal Act, the following words shall be inserted after the word “made” ;

“and also send a copy of the award to the Land Reforms Commissioner.”

5. Insertion of a new Section 12-A in Act I of 1894.—After Section 12 of the Principal Act the following shall be added as a new Section 12-A :

“12-A.—*Correction of award.*—(1) The Collector may at any time but not later than six months from the date of the award, or, where a reference has been made under Section 18, before the making of such reference, correct any clerical or arithmetical mistakes in the award either of his own motion or on the application of any person interested.

(2) The Collector shall give immediate notice of any correction made in the award to all persons interested.

(3) Where any excess amount is proved to have been paid to any person as a result of the correction made under sub-section (1) such person shall be liable to refund the excess, and if he defaults or refuses to pay, the same may be realized as an arrear of land revenue.”

6. Amendment of Section 17 of Act I of 1894.—After sub-section (1) of Section 17 of the Principal Act the following shall be inserted as a new sub-section (1-A) :

“(1-A) The power to take possession under sub-section (1) may also be exercised in the case of other than waste or arable land, where the land is acquired for or in connexion with sanitary improvements of any kind or planned development.”

7. Amendment of Section 18 of Act I of 1894.—In Section 18 of the Principal Act after sub-section (2) the following shall be added as new sub-sections (3) and (4) :

“(3) Without prejudice to the provisions of sub-section (1) the Land Reforms Commissioner may, where he considers the amount of compensation allowed by the award under Section 11 to be excessive, require the Collector that the matter be referred by him to the Court for determination of the amount of compensation.

Explanation—In any case of land under Chapter VII the requisition under this sub-section may be made by the Land Reforms Commissioner at the request of the Company on its undertaking to pay all the cost consequent upon such requisition.

(4) The requisition shall state the grounds on which objection to the award is taken and shall be made within six months from the date of the award.”

8. Amendment of Section 23 of Act I of 1894.—In Section 23 of the Principal Act—

(1) In clause “first” the following shall be added as an explanation at the end :

Explanation—In judging the market value aforesaid in any case where land is acquired for or in connexion with sanitary improvements of any kind or planned development due regard shall be had to the insanitary and inhygienic conditions of the land on the date aforesaid.”

(2) Sub-section (2) shall be deleted.

9. Amendment of Section 25 of Act I of 1894.—In Section 25 of the Principal Act the words “or be less than the amount awarded by the Collector under Section 11” shall be deleted.

10. Amendment of Section 39 of Act I of 1894.—The existing Section 39 of the Principal Act shall be renumbered as sub-section (1), and the following shall be added as a new sub-section (2):

“(2) In cases of acquisition of land for a society registered under the Societies Registration Act, 1860, sub-section (1) shall have effect as if for the words and figures ‘Sections 6 to 37 (both inclusive)’ the words and figures ‘Sections 6 and 7’ had been substituted.”

THE LAND IMPROVEMENT LOANS ACT, 1883

(Act No. XIX of 1883)

CONTENTS

Sections	Sections
1. Short title.	7. Recovery of loans.
Local extent, and commencement.	8. Order granting loan conclusive on certain points.
2. Act XXVI of 1871 and XXI of 1876 repealed.	9. Liability of joint borrowers as among themselves.
3. “Collector” defined.	10. Power to make rules.
4. Purposes for which loans can be granted under this Act.	11. Exemption of improvements from assessment to land revenue.
5. Mode of dealing with applications for loans.	12.
6. Period for repayment of loans.	

(As amended and adopted upto date)

[Received the assent of the Governor-General on the 12th October, 1883]

AN ACT

To consolidate and amend the law relating to loans of money by the Government for agricultural improvements.

Whereas it is expedient to consolidate and amend the law relating to loans of money by the Government for agricultural improvements; It is hereby enacted as follows:

Prefatory Note.—For S. O. R., see Gaz. of L., 1832. Pt. V. p. 954; for R. S. Com., see *ibid*, 1883, Supplement, p. 1296; for Proceedings in Council, see *ibid*, 1882, Supplement, pp. 1494 and 1697 and *ibid*, 1883, Supplement p. 2071.

Instruments executed by persons taking loans, or by their sureties, as security for the repayment of such loans, are exempted from stamp-duty—see the Indian Stamp Act, 1899 (Act II of 1899), *supra*, Sch. I, Article 40, exemption (1). and not. under S. 9.

1. Short title.—(1) This Act may be called the Land Improvement Loans Act, 1883.

(2) **Local extent and commencement.**—It extends to² [the whole of India except part B states] but shall not come into force in any part of [a Part A state or a Part C state]³ until such date as the [State Government]⁴, * * *⁵ may, by notification in the [Official Gazette]⁶, appoint in this behalf.

Note.—This Act has been extended to the areas mentioned in column I of this table under the Act or Order mentioned in column 2 and enforced in such areas under

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|--|--|
| 2. Subs. by the A. O. 1950 for [all the Provinces of India] which had been subs. by the A. O. 1948 for [the whole of British India]. | Govt.] which had been subs. by the A. O. 1937 for [L. G.]. |
| 3. Subs. by the A. O. 1950 for [the provinces] which had been subs. by the A. O. 1948 for [British India]. | 5. The words [with the previous sanction of the G. G. in C.] rep. by S. 2 of Act VIII of 1906. |
| 4. Subs. by the A. O. 1950 for [Provl. | 6. Subs. for [local official Gazette] by the A. O. 1937. |

notification, if any, mentioned in column 3 with effect from the date mentioned in column 4 against each such area.

Areas	Act or Order under which extended	Notification, if any, under which enforced	Date from which enforced
1	2	3	4
1. Rampur district.	Rampur (Application of Laws) Act, 1950.	S. 3 and Sch. . .	Dec. 30, 1949.
2. Banaras district.	Banaras (Application of Laws) Order, 1949.	No. 3262 (1)/XVII, d. Nov. 30, 1949.	Nov. 30, 1949.
3. Tehri-Garhwal district.	Tehri-Garhwal (Application of Laws) Order, 1949.	No. 3262 (ii)/XVII, d. Nov. 30, 1949.	Ditto.

Commencement :—The Act came into force in U. P. on *January, 1886, see Nots. No. 1854/1-349, d. November 3, 1885 and No. 3390-R, d. November 12, 1885, in Gazette 1885, Pt. I, pp. 529 and 541, respectively.

2. Act XXVI of 1871 and XXI of 1876 repealed.—(1) The Land Improvement Act, 1871, and Act XXI of 1876 (*an Act to amend the Land Improvement Act, 1871*), shall, except as regards the recovery of advances made before this Act comes into force and costs incurred by the Government in respect of such advances, be repealed.

(2) When in any Act, Regulation or Notification passed or issued before this Act comes into force, reference is made to either of those Acts, the reference shall, so far as may be practicable, be read as applying to this Act or the corresponding part of this Act.

3. "Collector" defined.—In this Act, "Collector" means the Collector of land revenue of a district, or the Deputy Commissioner, or any officer empowered by the [State Government]¹ by name or by virtue of his office to discharge the functions of a Collector² under this Act.

4. Purposes for which loans can be granted under this Act.—(1) Subject to such rules as may be made under Section 10, loans may be granted under this Act, by such officer as may, from time to time, be empowered in this behalf by the [State Government]¹, for the purpose of making any improvement, to any person having a right to make that improvement, or, with the consent of that person, to any other person.

(2) "Improvement" means any work which adds to the letting value of land and includes the following, namely :

- (a) the construction of wells, tanks and other works for the storage, supply or distribution of water for the purposes of agriculture, or for the use of men and cattle employed in agriculture ;
- (b) the preparation of land for irrigation ;
- (c) the drainage, reclamation from rivers or other waters, or protection from floods or from erosion or other damage by water, of land used for agricultural purposes or waste-land which is culturable ;

1. Subs. by the A. O. 1950 for [Provl. Govt.] which had been subs. by the A. O. 1937 for [L. G.].

2. Cf. S. 3 (ii) of the General Clauses Act, 1897 (Act X of 1897).

- (d) the reclamation, clearance, enclosure or permanent improvement of land for agricultural purposes ;
- (e) the renewal or reconstruction of any of the foregoing works, or alterations therein or additions thereto ; and
- (f) such other works as the [State Government]¹, * * *², may, from time to time, by notification in the [Official Gazette],³ declare to be improvements for the purposes of this Act.

5. Mode of dealing with applications for loans.—(1) When an application for a loan is made under this Act, the officer to whom the application is made may, if it is, in his opinion, expedient that public notice be given of the application, publish a notice, in such manner as the [State Government]¹ may, from time to time, direct, calling upon all persons objecting to the loan to appear before him at a time and place fixed therein and submit their objections.

(2) The officer shall consider every objection submitted under sub-section (1), and make an order in writing either admitting or overruling it :

Provided that, when the question raised by an objection is, in the opinion of the officer, one of such a nature that it cannot be satisfactorily decided except by a Civil Court, he shall postpone his proceedings on the application until the question has been so decided.

6. Period for repayment of loans.—(1) Every loan granted under this Act shall be made repayable by instalments (in the form of an annuity or otherwise) within such period from the date of the actual advance of the loan, or, when loan is advanced in instalments, ⁴[from the date of the advance of the last instalment actually paid] as may, from time to time, be fixed by the rules made under this Act.

(2) The period fixed as aforesaid shall not ordinarily exceed thirty-five years.

(3) The [State Government]¹ * * *², in making * * *⁵ the rules fixing the period, shall, in considering whether the period should extend to thirty-five years, or whether it should extend beyond thirty-five years, have regard to the durability of the work for the purpose of which the loan is granted, and to the expediency of the cost of the work being paid by the generation of persons who will immediately benefit by the work.

7. Recovery of loans.—(1) Subject to such rules as may be made under Section 10, all loans granted under this Act, all interest (if any) chargeable [thereon, and costs (if any) incurred in making the same, shall, when they become due, be recoverable by the Collector in all or any of the following modes, namely] :—

- (a) from the borrower—as if they were arrears of land revenue due by him ;
- (b) from his surety (if any)—as if they were arrears of land revenue due by him ;
- (c) out of the land for the benefit of which the loan has been

1. Subs. by the A. O. 1950 for [Provl. Govt.] which had been subs. by the A. O. 1937 for [L. G.].

2. The words [with the previous sanction of the G. G. in C], rep. by Act VIII of 1905, S. 2.

3. Subs. for [local official Gazette] by

the A. O. 1937.

4. Subs. for the words [from the date of the actual advance of the last instalment] by S. 2 of Act XVIII of 1899.

5. The words (and sanctioning) rep. by S. 3 of Act VIII of 1906.

granted—as if they were arrears of land revenue due in respect of that land :

- (d) out of the property comprised in the collateral security (if any)—according to the procedure for the realization of land revenue by the sale of immovable property other than the land on which that revenue is due :

Provided that no proceeding in respect of any land under clause (e) shall affect any interest in that land which existed before the date of the order granting the loan, other than the interest of the borrower, and of mortgagees of, or persons having charges on, that interest, and, where the loan is granted under Section 4 with the consent of another person, the interest of that person, and of mortgagees of, or persons having charges on, that interest.

(2) When any sum due on account of any such loan, interest or costs is paid to the Collector by a surety or an owner of property comprised in any collateral security, or is recovered under sub-section (1) by the Collector from a surety or out of any such property, the Collector shall, on the application of the surety or the owner of that property (as the case may be), recover that sum on his behalf from the borrower, or out of the land for the benefit of which the loan has been granted, in manner provided by sub-section (1).

(3) It shall be in the discretion of a Collector acting under the section to determine the order in which he will resort to the various modes of recovery permitted by it.

8. Order granting loan conclusive on certain points.—A written order under the hand of an officer empowered to make loans under this Act granting a loan to, or with the consent of, a person mentioned therein, for the purpose of carrying out a work described therein, for the benefit of land specified therein, shall for the purposes of this Act, be conclusive evidence—

- (a) that the work described is an improvement within the meaning of this Act ;
- (b) that the person mentioned had at the date of the order a right to make such an improvement ; and
- (c) that the improvement is one benefiting the land specified.

9. Liability of joint borrowers as among themselves.—When a loan is made under this Act to the members of a village community or to any other persons on such terms that all of them are jointly and severally bound to the Government for the payment of the whole amount payable in respect thereof, and a statement showing the portion of that amount which as among themselves each is bound to contribute is entered upon the order granting the loan and is signed by each of them and by the officer making the order, that statement shall be conclusive evidence of the portion of that amount which as among themselves each of those persons is bound to contribute.

10. Power to make rules.—The ¹[State Government] * * *² may, from time to time, by notification in the ³[Official Gazette], make

1. Subs. by the A. O. 1950 for [Provl. Govt.] which had been subs. by the A. O. 1937 for [L. G.].
 2. The words [subject to the control of the G. G. in C.] rep. by Act IV of 1914, S. 2 and Sch., Pt. I. The

words [subject to the control] had been subs. for the words [with the previous sanction] by Act VIII of 1906, S. 4.

3. Subs. for [local official Gazette] by the A. O. 1937.

rules consistent with this Act to provide for the following matters, namely :

- (a) the manner of making applications for loans ;
- (b) the officers by whom loans may be granted ;
- (c) the manner of conducting inquiries relative to applications for loans and the powers to be exercised by officers conducting those inquiries ;
- (d) the nature of the security to be taken for the due application and repayment of the money, the rate of interest at which, and the conditions under which, loans may be granted, and the manner and time of granting loans ;
- (e) the inspection of works for which loans have been granted ;
- (f) the instalments by which, and the mode in which, loans, the interest to be charged on them and the costs incurred in the making thereof, shall be paid ;
- (g) the manner of keeping and auditing the accounts of the expenditure of loans and of the payments made in respect of the same ; and
- (h) all other matters pertaining to the working of the Act.

Note :—For rules see Notes.

- no. 317-R/I-228B (ii)-39, d. Aug. 8, 1942 in Gaz. 1942, Pt. I-A, p. 46-A,
 no. 2820-R/I-433-B-36, d. Sep. 7, 1942, in Gaz. 1942, Pt. I-A, p. 315,
 no. 1259/I-370-B-42, d. June 25, 1943, in Gaz. 1943, Pt. I-A, p. 32-A,
 no. 2903/I-442-B-42, d. June 28, 1943, in Gaz. 1943, Pt. I-A, p. 182,
 no. 2313/I-129-B-42, d. Aug. 7, 1943, in Gaz. 1943, Pt. I-A, p. 218,
 no. 4066/I-129-B-42, d. Dec. 23, 1944, in Gaz. 1944, Pt. I-A, p. 381,
 no. 4257/I-361-B-44, d. May 22, 1945, in Gaz. 1945, Pt. I-A, p. 25-A,
 no. 2383/I-433-B-36, d. Sep. 3, 1945, in Gaz. 1945, Pt. I-A, p. 42-A,
 no. 2757/I-433-B-36, d. Mar. 8, 1946, in Gaz. 1946, Pt. I-A, p. 79,
 no. 150 (3)/I-670-B-45, d. Apr. 30, 1946, in Gaz. 1946, Pt. I-A, p. 169,
 no. 1645/I-433-B-36, d. Sep. 6, 1946, in Gaz. 1946, Pt. I-A, p. 847,
 no. 4980 (i)/I-758-B-46, d. Feb. 5, 1947, in Gaz. 1947, Pt. I-A, p. 54,
 no. 5818 (2)/I-1107-B-46, d. Feb. 11, 1947, in Gaz. 1947, Pt. I-A, p. 93-94,
 no. 4280 (3)/I-B-603-B-47, d. Aug. 8, 1947, in Gaz. 1947, Pt. I-A, p. 488,
 no. 114 (4)/I-B-36-B-48, d. Feb. 27, 1948,
 no. 2858/I-B-592-B-43, d. Nov. 3, 1948, in Gaz. 1948, Pt. I-A, p. 526,
 no. 3753 (i)/I-B-805-B-48, d. June 22, 1949, in Gaz. 1949, Pt. I-A, p. 311,
 no. 3624/I-B-402-B-49, d. June 23, 1949, in Gaz. 1949, Pt. I-A, p. 317,
 no. 8178/I-B-450-B-47, d. May 25, 1951, in Gaz. 1951, Pt. I-A, p. 371,
 no. 1407/I-B-12-c-B-1950, d. April. 26, 1952, in Gaz. 1952, Pt. I-A, p. 301,
 no. 5289/I-B-279-B-52, d. June 24, 1952, in Gaz. 1952, Pt. I-A, p. 382, and
 no. 1816 R/I-B-1951, d. Oct. 6, 1952, in Gaz. 1952, Pt. I-A, p. 676.

11. Exemption of improvements from assessment to land revenue.—When land is improved with the aid of a loan granted under this Act, the increase in value derived from the improvement shall not be taken into account in revising the assessment of land revenue on the land.

Provided as follows :

(1) where the improvement consists of the reclamation of waste-land or of the irrigation of land assessed at unirrigated rates, the increase may be so taken into account after the expiration of such period as may be fixed by rules to be framed by the ¹[State Government] * * * 2 ;

(2) nothing in this section shall entitle any person to call in question any assessment of land revenue otherwise than as it might have been called in question if this Act had not been passed.

1. Subs. by the A. O. 1950 for [Provl. Govt.] which had been subs. by the A. O. 1937 for [L. G.].

2. The words [with the approval of the G. G. in C.] rep. by S. 5 of Act VIII of 1906.

12. * * *

THE U. P. LAND REFORMS (SUPPLEMENTARY) ACT, 1952

(U. P. Act No. XXXI OF 1952)

CONTENTS

Sections	Sections
1. Short title, extent and commencement.	4. Appointment of Special Officer for correction of records.
2. Definitions.	5. Presumption regarding entries in records made under Section 4.
3. Persons in cultivatory possession in 1359 Fasli to be <i>Adhwasis</i> or <i>asamis</i> .	6. Savings.
	7. Power to make rules.

(As passed by the U. P. Legislature)

An Act

to supplement the provisions of the U. P. Zamindari Abolition and Land Reforms Act, 1950, for certain purposes

Whereas it is expedient to supplement the provisions of the U. P. Zamindari Abolition and Land Reforms Act, 1950, for the purposes hereinafter appearing ;

It is hereby enacted as follows :

Prefatory Note :—"Government have received a number of complaints that a large number of persons who have been in cultivatory possession of land in the holdings of *Bhumidhars* and *Sirdars* have been or are being forcibly evicted from the land. Government have good reasons to believe that a very great majority of these persons were admitted to the possession of the land by the tenure-holders. They are the persons who constitute the weakest and often the poorest section of the peasantry. The Bill is intended to protect this class of persons by giving effect to their rights in the land." *Vide* Statement of Objects and Reasons published in the U. P. Gazette Extraordinary, dated August 21, 1952.

1. Short title, extent and commencement.—(1) This Act may be called the U. P. Land Reforms (Supplementary) Act, 1952.

(2) It extends to the areas to which the U. P. Zamindari Abolition and Land Reforms Act, 1950, for the time being extends.

(3) It shall come into force at once, except in areas mentioned in clauses (a) to (f) of sub-section (1) of Section 2 of the U. P. Zamindari Abolition and Land Reforms Act, 1950, where it shall come into force on such date as the State Government may by notification published in the Gazette appoint and different dates may be appointed for different areas.

Note:—The Act received the assent of the Governor on November 7, 1952 and the authoritative English text was published in U. P. Gazette Extraordinary, dated November 7, 1952.

2. Definitions.—In this Act, unless there is anything repugnant in the subject or context—

(a) "appointed date" means with reference to any area, the date of vesting of such area under Section 4 of the U. P. Zamindari Abolition and Land Reforms Act, 1950 ;

3. The original S. 12 re. amendment of Act III of 1877 was *rep.* in parts by Act XII of 1891 and by Act XVI of 1908. Another S. 12 re. certain powers of State Government to be

exercisable by Board of Revenue or Financial Commissioner was *ins.* by Act IV of 1914, S. 2 and Sch., Pt. I, but was *omit.* by U. P. Act XII of 1922, S. 2 and Sch.

- (b) "Land" means land, other than grove-land, of which any person has become *bhumidhar* or *sirdar* under Section 18 or 19 of the U. P. Zamindari Abolition and Land Reforms Act, 1950.
- (c) words and expressions not defined in this Act and used either in the U. P. Land Revenue Act, 1901, or the U. P. Tenancy Act, 1939, or the U. P. Zamindari Abolition and Land Reforms Act, 1950, shall have the meaning assigned to them in such Acts.

3. Persons in cultivatory possession in 1359 Fasli to be *adhivasis* or *asamis*.—(1) Every person who was in cultivatory possession of any land during the year 1359 *fasli* but is not a person who as a consequence of vesting under Section 4 of the U. P. Zamindari Abolition and Land Reforms Act, 1950, (hereinafter referred to as the said Act) has become a *bhumidhar*, *si-dar*, *adhivasi* or *asami* under Sections 18 to 21 of the said Act shall be and is hereby declared to be, with effect from the appointed date—

- (a) if the *bhumidhar* or *sirdar* of the land was, or where the land belongs jointly to two or more *bhumidhars* or *sirdars*, all of them were, on the appointed date person or persons referred to in items (i) to (vi) of sub-section (2) of Section 10 of the said Act, an *asami* from year to year, or
- (b) if the *bhumidhar* or *sirdar* was not such a person, an *adhivasi*, and shall be entitled to all the rights and be subject to all the liabilities conferred or imposed upon an *asami* or an *adhivasi*, as the case may be, by or under the said Act.

Explanation.—A person shall not be deemed to be in cultivatory possession of the land, if he was cultivating it as a mortgagee with possession or a *thekedar*, or he was merely assisting or participating with a *bhumidhar*, *sirdar*, *adhivasi*, or *asami* concerned in the actual performance of agricultural operations.

(2) Where an *adhivasi* or *asami* declared under sub-section (1) has been dispossessed otherwise than in due course of law, he or any person claiming through him may apply within six months of the date of making the entry referred to in sub-section (2) of Section 4 to the Assistant Collector, in charge of the Sub-Division for putting him in possession of the land and the provisions of Section 232 of the said Act shall, in so far as may be, apply to and the order of the Assistant Collector shall be executable in the same manner as an order under sub-section (4) of the said section.

4. Appointment of Special Officer for correction of records.—(1) With a view to ascertain whether any person referred to in sub-section (1) of Section 3 was in cultivatory possession of the land during 1359 *fasli*, the State Government may, as soon as may be, after the commencement of this Act, appoint an officer, not lower in rank than an Assistant Collector of the second class, for the correction of the record of rights for 1359 *fasli* in any area.

(2) It shall be the duty of such officer either *suo motu* or on the application of any person presented to him within six months of the date of commencement of this Act, after such local investigation as he may consider necessary, to enter the name of every such person as occupant of the land in the record-of-rights for the year 1359 *fasli*, any law to the contrary notwithstanding.

5. Presumption regarding entries in records made under Section 4.—The entry made in the record-of-rights in pursuance of Section 4 shall be deemed to be correct unless the party challenging proves it to be wrong.

6. Savings.—Nothing in this Act shall apply to any land—

(a) in respect of which—

- (i) a suit of the nature provided for in Section 180 or Section 183 of the U. P. Tenancy Act, 1939, or an appeal or other proceeding from a decree passed in such suit was pending in any revenue or civil court on the 30th day of June, 1952;
- (ii) a decree for possession had been passed and become final on or before the said date; or
- (iii) an order for restoration of possession has been passed under Section 522, Criminal Procedure Code, before the commencement of this Act.

(b) which is or which has been on or before the commencement of this Act, declared evacuee property under and in accordance with the law relating to administration of evacuee property.

7. Power to make rules.—The State Government may make rule providing for the manner of and the procedure to be followed in investigations under sub-section (2) of Section 4 and generally for giving effect to the provisions of this Act.

THE UNITED PROVINCES LAND REVENUE ACT, 1901¹

(U. P. Act No. III of 1901)

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SCHEDULE

(Received the assent of the Lieutenant Governor on the 24th October, 1901, and of the Governor-General on the 19th December, 1901, and was published² under Section 40 of the Indian Councils Act, 1861, on the 21st December, 1901).

AN ACT

to consolidate and amend the law relating to Land Revenue and the jurisdiction of Revenue Officers in the [United Provinces]³.

Whereas it is expedient to consolidate and amend the law relating to land revenue and the jurisdiction of Revenue Officers in the [United Provinces]⁴; It is hereby enacted as follows:

Prefatory Note.—For Statement of Objects and Reasons, see *Gazette* 1899, Pt. V p 223; for first R. S. Com., see *ibid*, 1901, d. June 22, p. 161 for second R. S. Co., see *ibid*, p. 172 and for discussion see L. C. Pro. *ibid* 1899, Pt. VI, p. 399, *ibid* 1900, p. 341, *ibid* 1901, Pt. V. d. November 2, pp. 252 and 254.

Title.—The title of an Act may be resorted to, to explain an enacting clause when doubtful⁵.

Preamble.—The preamble to an act is the key to open the meaning of those who drafted and passed the Act⁶, but it cannot be taken to cut down the express provisions⁷, or control its provisions. The preamble may therefore suggest what the intention might have been, but one has to see whether that intention has been carried out by the language of the statute⁸.

Headings.—Although the headings in the body of an Act are of some help in clearing up obscurities where is an ambiguity, they cannot control the provisions of sections when they are unequivocal and clear. The headings are like preambles which supply a key to the mind of the Legislature, but do not control the substantive sections of the enactment⁹.

Punctuations.—Are not part of the statute and a court of law may interpret the section without the commas inserted in the print¹⁰.

CHAPTER I

Preliminary

Title, extent and commencement.—(1) This Act may be

2. See *Gazette*, 1901, Pt. V, p. 349.
3. Subs. by Ss. 3 & 5 of U. P. Act XI of 1941 for "Province of Agra and Oudh" which had been subs. for "North-Western Provinces and Oudh" by S. 28 (2) of U. P. Act I of 1904.
4. Subs. by S. 4 of U. P. Act XI of 1941 for "Agra Province and Oudh" which had been subs. for "the North-Western Provinces" by S. 15 of U. P. Act II of 1932.
5. *Hirno Chandra v. Shooru Shones*, 9 W. R. 402 (F B).
6. *Salkied v. Johnston*, 3 Q. B. 313.

7. *Queen Empress v. Indrajit*, 11 A 263; *Aga Hoong v. The Queen*, 7 M. I. A. 72.
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9. *Durga Thathera v. Narain Thathera*, 1931 A 597 (F. B.); *Dwarka Nath Choudhary v. Tajazur-Rahman Sarkar*, 44 C 267.
10. *Niaz Ahmad Khan v. Parsottam Chandra*, 1931 A 145; *Maharaja of Burdwan v. Krishna Kamini Dasi*, 14 I. A. 30.

called the [United Provinces]¹¹ Land Revenue Act, 1901.

§ (2) ¹²[It extends¹³ to the whole of [Uttar Pradesh]¹⁴ except the areas specified in the First Schedule] :

[Provided that]¹⁵ the [State Government]¹⁶ may, by notification in the [official Gazette]¹⁷, extend¹⁸ the whole or any part of this Act to all

11. Subs. by S. 5 (1) of U. P. Act XI of 1941, made by the Governor in exercise of the powers assumed by him under S. 93 of G. of I. Act, 1935 for "Province of Agra and Oudh" which had been subs. for "North-Western Provinces and Oudh" by S. 28 (2) of U. P. Act I of 1904, as continued by U. P. Act XIII of 1948.
12. Subs. by S. 5 of U. P. Act XI of 1941, made by the Governor in exercise of the powers assumed by him under S. 93 of G. of I. Act, 1935, for the original sub-s. as amended by U. P. Act I of 1904 and adapted by the A. O. 1937— which ran as follows :
"It extends in the first instance to all the territories"****"administered by the Lieutenant Governor of the Province of Agra and Chief Commissioner of Oudh except the areas specified in the First Schedule."
13. This Act has been extended subject to some restrictions to Almora, Garhwal exclusive of Khan Villages of Garhwal Bhabar estate and to Naini Tal District exclusive of Cashipur Tahsil, Tarai and Kham villages of Bhabar Tahsil by S. I (2) of U. P. Land Revenue Act, 1901 (Act III of 1901), vide not. No. 3109/I-A, d. Oct. 18, 1947 in Gazette 1947, Pt. I-A, p. 643-645.
14. Subs. for [the United Provinces] by the A. O. 1950.
15. Subs. for "But, subject to the provisions of Ben. Reg. VII, of 1828" by S. 3 of U. P. Act VI of 1915.
16. Subs. by the A. O. 1950 for (Provl. Govt.) which had been subs. by the A. O. 1937 for (L. G.)
17. Subs. for (Gazette) by the A. O. 1937.
18. This Act has been extended to the areas mentioned in column I of this table under the Act or Order mentioned in column 2 and enforced in such areas under notification, if any, mentioned in column 3 which effect from the date mentioned in column 4 against each such area :

Areas	Act or Order under which extended	Notifications, if any, under which enforced	Date from which enforced
1	2	3	4
(1) Rampur District ..	Rampur (Application of Laws) Act, 1950	..	Chs. I, II, and ss. 21-27 of Ch. III came into force on and from December 1, 1949.
(2) Banaras District ..	Banaras (Application of Laws) Order, 1949	No. 3252 (1) and No. 3262 (2) XVII, d. Nov. 30, 1949	Chs. I, II and ss. 21 to 27 of Ch. III came into force w. e. f. November 30, 1949.
(3) Tehri-Garhwal District ..	Tehri-Garhwal (Application of Laws) Order, 1949	Do.	Chs. I, II and ss. 21 to 27 of Ch. III came into force w. e. f. November 30, 1949. The remaining provisions of the Act shall extend to and came into force on such date and subject to such exceptions and modifications, as the State Government may, by notification in the official Gazette specify in this behalf.

or any of the areas so excepted [subject to exceptions or modifications as it thinks fit] :¹⁹

[Provided also that no provision of this Act which is inconsistent with the provisions of the Pargana of Kaswar Raja Act, 1915, shall apply to the pargana of Kaswar Raja in the district of Banaras:]²⁰ and

(3) It shall come into force on the first day of January, 1902.

2. Repeal.—(1) The enactments specified in the Second Schedule are repealed to the extent mentioned in the third column thereof.

(2) When this Act or any portion thereof is extended [with or without exception or modification]²¹ to any of the areas excepted in the First Schedule, so much of any Act or Regulation in force therein as is inconsistent with this Act, or the portion thereof [as]²² extended, as the case may be, shall be thereby repealed.

(3) The repeal of any enactment by this Act shall not legalize any practice which immediately before the passing of such enactment was illegal, and shall not revive any right, privilege, matter or thing not in force or existing at the commencement of this Act.

3. Savings.—(1) All rules, appointments, assessments, partitions, and transfers made, notifications, proclamations, and orders issued, authorities and powers conferred, farms granted, records-of-rights and other records framed, rights acquired and liabilities incurred, rents fixed, places and times appointed, and other things done under any of the enactments hereby repealed shall, so far as may be, be deemed to have been respectively made, issued, conferred, granted, framed, acquired, incurred, fixed, appointed, and done under this Act.

(2) Any enactment or document referring to any enactment hereby repealed, shall be construed to refer to this Act, or to the corresponding portion thereof.

4. Definitions.—In this Act unless there be something repugnant in the subject or context—

(1) "Board" means the Board of Revenue ;

²³ [(IA) 'Ex-proprietary tenant', 'grant at a favourable rate of rent', 'grove', 'grove-holder', 'grove-land', 'hereditary tenant', 'improvement', 'khudkashi', 'land-holder', 'occupancy tenant', 'rent', 'rent-free grant', 'sir', and 'tenant' have the meanings assigned to them in the United Provinces Tenancy Act, 1939, subject to the following modifications :

(a) in the definition of improvement in sub-section (8) of Section 3 of the United Provinces Tenancy Act, 1939, the words

19. *Ins.* by S. 5 of U. P. Act XI of 1941, made by the Governor in exercise of the powers assumed by him under S. 93 of G. of I Act, 1935, as continued by Act XIII of 1948.

20. *Ins.* by S. 3 of the U. P. Act VI of 1915.

21. *Ins.* by S. 6 of U.P. Act XI of 1941, made by the Governor in exercise of the powers assumed by him under S. 93 of G. of I. Act, 1935, as con-

tinued by S. 3 and Sch. of U.P. Act XIII of 1948.

22. *Subs.* for (so) by S. 6 of U.P. Act XI of 1941.

23. *Sub. S. (IA) ins.* by S. 7 of U. P. Act XI of 1941, made by the Governor in exercise of the powers assumed by him under S. 93 of G. of I. Act, 1935, it was re-enacted by U. P. Act XIII of 1948.

'with reference to a tenant's holding' shall be deemed to have been omitted ;

(b) in the definition of 'rent' in sub-section (18) of Section 3, in the United Provinces Tenancy Act, 1939, the words and in Chapter VII except when the contrary intention appears, include 'sayer' shall be deemed to have been omitted ; and

(c) the term 'tenant' as defined in sub-section (23) of Section 3 of the United Provinces Tenancy Act, 1939, shall be deemed not to include a 'thekadar']

(2) "Incumbrance" means a charge upon or claim against land arising out of private contract.

(3) "Lambardar" means a co-sharer of a mahal appointed under this Act to represent all or any of the co-sharers in that mahal ;

(4) "Mahal" means—

(a) any local area held under a separate engagment for the payment of the land revenue: Provided that—

(i) if such area consists of a single village or portion of a village a separate record-of-rights has been framed for such village or portion ;

(ii) if such area consists of two or more villages or portions of villages, a separate record-of-rights has been framed either for the entire area, or for each of the villages or portions of villages included therein ;

(b) any revenue-free area for which a separate record-of-rights has been framed ;

(c) for such purposes as the [State Government]²⁴ may determine, any grant of land made heretofore or hereafter under the Waste Land Rules ; and

(d) any other local area which the [State Government]²⁴ may by general or sepecial order declare to be a mahal ;

(5) "Minor" means as a person who, under Section 3 of the Indian Majority Act, 1875, has not attained his majority ;

(6) * * * * ²⁵.

(7) "Revenue" means land revenue ;

(8) "Revenue Court" means all or any of the following authorities (that is to say), the Board and all members thereof, Commissioners, Additional Commissioners, Collectors, [Additional Collectors]²⁶ Assistant Collectors, Settlement Officers, Assistant Settlement Officers, Record Officers, and Assistant Record Officers and Tahsildars ;

(9) "Revenue Officer" means any officer employed under this Act in maintaining revenue records, or in the business of the land revenue ;

(10) "Revenue-free", when applied to land, means land whereof the revenue has either wholly or in part been released, compounded for, redeemed, or assigned ;

(11) "Settlement" means settlement of the land revenue ;

24. Subs. by the A. O. 1950 for [Provl. Govt.] which had been subs. by the A. O. 1937 for [L.G.].

25. Sub-a. (6) omit. by S. 7 of U. P. Act XI of 1941, made by the Governor in exercise of the powers assumed by him under S. 93 of G. of I. Act, 1935: as continued by U. P. Act XIII of

1948, it ran as follows: "'Rent' and 'tenant' shall have the same meaning as they have in the Agra Tenancy Act, 1926, or the Oudh Rent Act, 1886, as the case may be."

26. Add. by S. 16 of U. P. Act II of 1932.

(12) * * * 27.

²⁶ [(13) "*sayar*" means receipts arising from or on account of natural products, excluding stones and other minerals; and]

(14) "*Taluka*" or "*Taluqdari Mahal*" means an estate in Oudh to which the provisions of the Oudh Estates Act, I of 1869, apply; and "*Taluqdar*" means the proprietor of such an estate;

(15) "*Under-proprietor*" means in Oudh a person possessing a heritable and transferable right in land who is, or but for a judicial decision or contract would be, liable to pay rent therefor;

²⁹ [(16) "*sub-proprietor*" in Agra means a person having an inferior but heritable and transferable proprietary interest in land, with whom a sub-settlement has been made under the provisions of this Act or of any other law for the time being in force.

Definitions.—Expressions defined in the Act must be given the same meaning throughout the Act³⁰. The terms defined in the Act must be given meaning contained in the definition unless it is clear that they must be given different meaning³¹, because the meaning assigned is an artificial meaning³², and where a term has been defined by statute, the question is not whether a particular category has been recognised before, but whether it comes within the scope of that definition³³. Lexicons defines an expression in terms of a decision, and unless the decision was one given under the Act, it involves a dangerous method of interpretation³⁴. The word "include" is very generally used in interpretation clauses in order to enlarge the meaning of words or phrases occurring in the body of the statute, and when it is so used these words or phrases must be construed as comprehending, not only such things as they signify according to their natural import, but also things which the interpretation clause declares that they shall include.³⁵ Where a definition in an act does not contain the qualifying words "unless there is anything repugnant in the subject or context" those words are always to be understood. Words must take their colour from the context and need not have the same meaning in every section³⁶.

Sub-section (2)—Incumbrance.—The essential requisite is that it must be created by private contract. A birtdari tenure judicially affirmed by a decree of court is not an incumbrance³⁷, nor an incumbrance created by one or two co-sharers or by

27. *Omit.* by S. 7 of U. P. Act XI of 1941, made by the Governor in exercise of the powers assumed by him under S. 93 of G. of L. Act, XIII of 1948.

The original sub-s. as amended by S. 2 of U. P. Act IV of 1923, S. 2 of U. P. Act VI of 1926, and S. 2 of U. P. Act II of 1932, ran as follows:

"Sir shall have the same meaning in Agra as it has in the Agra Tenancy Act, 1926."

28. *Subs.* by S. 7 of U. P. Act XI of 1941 [see footnote (4) above], for the original sub-s. as *subs.* by S. 2 of U. P. Act V of 1921; it ran as follows:

"Sir shall have the same meaning in Oudh as it has in the Oudh Rent Act, 1886, as amended by the Oudh Rent (Amendment) Act 1921."

29. *Subs.* by S. 7 of U. P. Act XI of 1941, [see footnote (4) above], for the sub-s. as *ins.* by S. 3 of U. P. Act II of 1932; it ran as follows:

"A "*sub-proprietor*" in the Province of Agra means a person who possesses a subordinate but heritable and transferable right and whose name is recorded in the register of pro-

prietors as such; and includes such persons as a rent-free grantee to whose grant the provisions of Ss. 185 and 186 of the Agra Tenancy Act apply, a *gawanhadar*, an *arazidar*, or other like person owning these rights."

30. *Hajipur Central Co-operative Union Ltd. v. Kamla Prasad*, 1937 P 531; *Parshotam Das, v. Official Liquidator, Gorakhpur*, 1938 A 613.

31. *Official Liquidator v. Jugal Kishore*, 1939 A 1.

32. *Mst. Surajbansi Kuer v. Mt. Larho Kuar*, 1946 P 310 (312).

33. *Shoraj v. Mudeer Khan*, 1934 A 868.

34. *Firm Karam Narain v. Volkart Bros.*, 1946 L 116 (F. B.).

35. *Faleh Chand v. Akimuddin Choudhery*, 1943 C 108 (110); *King v. B. C. Fir and Cedar Humber Co. Ltd.*, 1932 P. C. 121, *Province of Bengal v. Sm. Hurgul Kumari Law*, 1946 C 217.

36. *Kartick Chandra v. Harsha Mukhi Dasi*, 1943 C 345 (F. B.); *Md. Manjural Haque v. Bissetwar Banerjee*, 1943 C 361.

37. *Kamla Seroman Prasad v. Ram Saroop*, 11 R. D. 68=1927 O 202=2 O. W. N. 277.

the Lambardar paying Land Revenue for another co-sharer.³⁸

Sub-section (3)—Lambardar.—A Lambardar must be co-sharer, and a mortgagee being a co-sharer can be appointed a Lambardar³⁹. The procedure for appointment of a Lambardar is given in Section 45, Land Revenue Act, and Chapter VIII Revenue Court Manual paras 216 to 239. In the case of an under-proprietor or Pukhtadari mahal, the Lambardar must be an under-proprietor or Pukhtadar.⁴⁰ The appointment of a Lambardar is a statutory one and once appointed he exercises his powers, independently of the co-sharer⁴¹. Where a person was the *defacto* Lambardar, he cannot say that he had not been legally appointed, it must be presumed that he consented to perform the obligations which go with the post.⁴² Co-sharers having right of nomination mean those co-sharers in that part of the mahal which is covered by the Lambardarship.⁴³

Sub-section (4)—Mahal.—The following are the essential elements of a mahal:—

(1) The area must be definite and specified though it may include many villages.⁴⁴

(2) There must be a separate engagement for payment of revenue with the Government, not a private arrangement between proprietors⁴⁵.

(3) There must be separate record-of-rights for such area.⁴⁶

(4) If miscellaneous Zamindari plots are detached from mahal in all essentials, they cannot come within the ambit of mahal⁴⁷.

The Abadi area in a mahal is a part of the local area, yet the houses in the Abadi, apart from their sites belong to Zamindar or to the ryots, do not form part of the mahal.⁴⁸ For difference between mauza and mahal see 12 A. W. N. 100 *per* Mahmud J.

Sub-section (7)—Revenue.—In the early days, there was hardly any distinction between *lagan* and *Malguzari*, and therefore in old and even recent documents the word *Malguazri* has been loosely used, and a restricted meaning on this term should not be placed without evidence as to what was intended⁴⁹. Having regard to circumstances and manner in which the *Nazrana* custom was set in, it cannot be held that it is revenue.⁵⁰

Sub-section (9)—Revenue Officer.—A Rostor Officer is neither a Revenue Court nor a Revenue Officer⁵¹.

Sub-section (10)—Revenue Free.—It is a cardinal principle of revenue law that all land is liable for payment of revenue, and cannot be affected by private agreement.⁵²

Sub-section (11).—See Section 63 K, 63 L, 94, 65, and Chapters IV and V.

Sub-section (13)—Sayar.—Means receipts arising from or on account of "natural products," which include items which grow of their own accord such as *Lac*, etc., and not only periodical payments and deliveries of fruit but also the delivery of wood or the payment of its equivalent value when the tree is cut down.⁵³ Fish and other river products are all included in it⁵⁴.

Sub-section (14)—Taluqa or Taluqdari Mahal.—For the meaning of the word "Taluqdar" see Sections 8, 9 and 10 of the Oudh Estates Act. A Taluqdari Mahal may or may not be a Mahal as defined in Section 4 (4) for the purposes of revenue. Where village forming part of a Taluqa falls in various assessment circles and condi-

38. *Seth Chitor Mal v. Shib Lal*, 14 A 273 (F. B.) See also *Kino Ram Das v. Muzaffar Husain Shaba*, 14 C 809 (F. B.).
39. *Lachmi Kumar v. Beni Prasad*, 3 R. D. 333. For a Thekedar as co-sharer see *Mithu Lal v. M. Chameli*, 18 R. D. 217.
40. *Harbans Lal v. Mt. Dhiraja Kuar*, 1936 O 371=1936 O. W. N. 599=1936 R. D. 291.
41. *Deepa v. Udai Ram*, S. D. 6 of 1903.
42. *Mithu Lal v. Mt. Chameli*, 1935 A 777.
43. *Bakhtawar Khan v. Ghulam Yahia*, 4 R. D. 18=3 U. D. 164.
44. 12 A. W. N. 100.
45. *Samiam Ali v. Ram Prasad*, 4 O. C. 365; *Radha Krishnaji v. Sarju Dei*, 3 D. I. of 1925.
46. *Abdul Hai v. Nain Singh*, 20 A 92;

- Kuar Dat Prasad v. Nahar Singh*, 11 A 257.
47. *Mst. Jogeshara v. Achchaibad*, 1952 A 693.
48. *Umrao Singh v. Kacheru Singh*, 1939 R. D. 342 (=43).
49. *Zalim v. Court of Wards*, 6 R. D. 115 But see *Rani Chaitra Kumari Devi v. W. W. Broncke*, 1927 P. C. 250.
50. *Gokal Singh v. Raj Narain*, 1944 R. D. 58.
51. *Lokhumar Singh v. Nihala*, 17 R. D. 853.
52. *Govind Prasad v. Suraj Bux*, 1 R. D. 233=4 S. D. of 1903; *Naurangi Lal v. Khoji Lal*, 1 R. D. 531=18 S. D. of 1925.
53. *Sheo Balak v. Nabi Bux*, 1935 R. D. 381.
54. 14 R. D. 256.

tions vary from village to village, such Taluqdari Mahal within the meaning of Section 4 (4) so as to have one engagement for the payment of revenue for all the villages.⁵⁵

Sub-section (15)—Under-proprietor.—The difference between a proprietor and under-proprietor in Oudh is that the first signifies a proprietor or part proprietor of a Mahal entitled to engage directly with the Government for land revenue, while an under-proprietor is the owner of land within a Mahal who does not engage directly with the Government, but pays his assessment to the proprietor of the Mahal⁵⁶. The under-proprietor holds rights subject to this limitation only that he has to pay the land revenue, the cesses and something by way of *Malikana* to the superior proprietor⁵⁷. The rent payable by an under-proprietor is dealt with under Section 79 of the Act. Section 75 of the Act deals with inferior and superior proprietors in Agra and has no concern with under-proprietors in Oudh.⁵⁸ The under-proprietors may be classified under the following heads:—

- (a) Pukhtadars—Those with whom sub-settlement was made under the Oudh Sub-Settlement Act XXVI of 1806⁵⁹.
- (b) Holders of dihdari or dibdari rights—Those to whom a certain portion of property sold was assigned by the vendee for subsistence⁶⁰.
- (c) Holders of Nankar lands.
- (d) Birt tenure-holders.
- (e) Holders of land decreed under Hard Case Circular known as Circular No. 4 of 1867 dated 8th February, 1867.⁶¹
- (f) Holders of heritable and transferable rights in land subordinate to the Taluqdar or Superior proprietor.

Sub-section (16)—Sub-proprietor.—Sub-proprietors are peculiar to the province of Agra. A claim to sub-proprietorship can be established only in Civil or Settlement Courts and not otherwise⁶². A lessee under a permanent lease with heritable and transferable rights is a sub-proprietor⁶³. Sirdars, if they do not exercise any proprietary right, they are sub-proprietors⁶⁴.

CHAPTER II

Appointments and Jurisdiction

5⁶⁵. Controlling powers of State Government and Board respectively.—The control of all non-judicial matters connected with the land revenue in [Uttar Pradesh]⁶⁶ other than matters connected with settlement is vested in the [State Government]⁶⁷ and the control of all judicial matters and of all matters connected with settlement [* * *]⁶⁸ is vested in the Board.

Judicial and Non-judicial.—Paras 911 and 912 of Chapter XXXV of the Revenue Manual enumerate judicial and non-judicial matters. Para 913 lays down that any matter about which doubt may arise whether it is a judicial or non-judicial shall be referred to the Local Government for orders. Non-judicial matters shall be governed by the Circulars of the Board of Revenue. Instances of judicial matters are: (1) Adjudication upon the rights of rival candidates for the office of a Lambardar,⁶⁹ (2) Proceedings in which a Settlement Officer directs a tenant to have heritable and non-transferable rights⁷⁰ and (3) Patwaris' appointment⁷¹, while instances of non-judicial proceedings are: (1) order passed for the correction of revenue papers in compliance with the administrative rules framed by the Board⁷², (2) Proceedings be-

55. *Birendra Bikram Singh v. King Emperor*, 1938 R. D. 842.

56. *Govind Prasad v. Suraj Baksh*, S. D. 4 of 1903.

57. 1 O. L. J. 389.

58. *Maharaja Keshava Prasad Singh v. Beni Kunwar*, 1936 R. D. 309.

59. *Special Manager v. Sher Bahadur*, 8 R. D. 205.

60. *Kishun v. Shyam Sunder*, 19 O. C. 27. See also 20 O. C. 285.

61. *Sant Bux Singh v. Qamar Jehan Begam*, 6 R. D. 77.

62. *Wali Mohammed v. Raja Mohan*, 1938 R. D. 289.

63. 17 R. D. 744.

64. 1938 R. D. 565.

65. S. 5 subs. by S. 2 and Sch. of U. P. Act XII of 1922.

66. Sub. by A. O. 1950 for [United Provinces].

67. Subs. by the A. G. 1950 for [Prov. Govt.] which had been subs. by the A. O. 1937 for [L. G.].

68. The words "under this Act" deleted by U. P. Act XVI of 1953.

69. *Mula Singh v. Ganga Sahai*, 5 R. D. 72 (73).

70. *Sukhpal Singh v. Brij Kishore*, 4 R. D. 404.

71. *Dina Nath v. K. E.*, 4 R. D. 242.

72. *Chiddey Khan v. Murad Khan*, 7 R. D. 122.

fore a Deputy Commissioner as Chairman, District Board⁷³, (3) an enquiry on the death of a Government employee to ascertain the amount due to the deceased⁷⁴, (4) enquiry under Section 46 as to wrong information supplied by a Patwari⁷⁵, (5) Departmental or Executive enquiry⁷⁶, (6) Enquiry by Collector as to who shall pay the stamp duty⁷⁷.

6. Appointment of members of the Board.—The [State Government]⁶⁷ * * * *⁷⁸ shall appoint * * *⁷⁹ the members of the Board.

Constitution.—The Constitution of a Board of Revenue with two judicial members and one administrative is quite legal⁸⁰.

7. Power to distribute business.—(1) Subject to such rules or orders as the [State Government]⁶⁷ may prescribe or issue, the Board may distribute its business and make such territorial division of its jurisdiction amongst its members as to the Board may seem fit.

(2) All orders made or decrees passed by a member of the Board in accordance with such distribution or division shall be held to be the orders or decrees (as the case may be) of the Board.

8. Alteration or reversal of a judicial order.—No decree or order in a judicial proceeding coming under the consideration of the Board on appeal, on a reference under Section 218, or in revision under Section 219, shall be altered or reversed without the concurrent judgment of two members of the Board.

Judicial Proceedings.—See notes under Section 5 *Supra*.

Concurrent Judgment.—No decree or order can be altered or reversed without the concurrent judgment of two members of the Board. Thus one member, though he can dismiss an appeal is powerless to alter or reverse the order or decree; and in case of difference of opinion the order of the lower Appellate Court is to be upheld⁸¹. However, if the appeal is heard by a Senior member, and the judgment is subsequently concurred in by the junior member, there is no defect⁸².

9. Reference to State Government in case of difference of opinion.—When the members of the Board are equally divided in opinion as to any order to be made in the course of [business connected with settlement]⁸³ the question regarding which there is such division of opinion, shall be referred for decision to the [State Government]⁸⁴.

10. Power to authorize member to exercise power of Board.—Notwithstanding anything contained in this Act the [State Government]⁸⁴ may authorize any member of the Board to perform or exercise, either generally or in respect of any particular locality, all or any of the duties and powers imposed and conferred on the Board.

11. Power to create, alter, and abolish divisions, districts, tahsil, and sub-divisions.—(1) The [State Government]⁸⁴ may * * *⁸⁵ create new or abolish existing divisions or districts.

73. *King Emperor v. Kunwar Bahadur*, 23 O. C. 136.

74. 6 A 103.

75. 13 O. C. 198.

76. 15 A. L. J. 654.

77. 7 O. W. N. 795.

78. The words [with the previous sanction of the G. G. in C.] *omit.* by S. 2 and Sch. I of Act XXXVIII of 1920.

79. The words "and may remove" *omit.* by A. O. 1937.

80. *Sho Nath Tewari v. Raghunandan*, 1947 A. W. R. (Rev.) 164.

81. *Ram Ghulam v. Jalpa Prasad*, 3 R. D.

450; *Mubeshri Begam v. Tirkha*, 6 R. D. 213 (214). See also *Rule 12 Boards Circular 8—II*.

82. *Devendrapal Singh v. Havendrapal Singh*, 1939 R. D. 80.

83. *Subs.* for the words "its non-judicial business" by S. 2 and Sch. of U. P. Act XII of 1922.

84. *Subs.* by the A. O. 1950 for (Provl. Govt.) which had been *subs.* by the A. O. 1937 for (L. G.)

85. The words "with the previous sanction of the G. G. in C." *omit.* by A. O. 1937.

(2) The [State Government]⁸⁶ may alter the limits of any division, district, or tahsil, and may create new or abolish existing tahsil, and may divide any district into sub-divisions, and may alter the limits of sub-divisions.

(3) Subject to the orders of the [State Government]⁸⁴ under sub-section (2), all tahsils shall be deemed to be sub-divisions of districts.

12. Commissioners of divisions.—The [State Government]⁸⁹ shall appoint in each division a Commissioner, who shall within his division exercise the powers and discharge the duties conferred and imposed on a Commissioner under this Act, or under any other law for the time being in force, and who shall * * *⁸⁸ exercise authority over all the revenue officers in his division.⁸⁷

13. Appointment, power, and duties of Additional Commissioner.—(1) The [State Government]⁸⁹ may * * *⁸⁸ appoint an Additional Commissioner in a division, or in two or more divisions combined.

(2) An Additional Commissioner shall hold his office during the pleasure of the [State Government]⁸⁹.

(3) An Additional Commissioner shall exercise such powers and discharge such duties of a Commissioner in such cases or classes of cases as the [State Government]⁸⁹ or in the absence of orders from the [State Government]⁸⁹ the Commissioner concerned, may direct.

(4) This Act and every other law for the time being applicable to a Commissioner shall apply to the Additional Commissioner, when exercising any powers or discharging any duties under sub-section (3), as if he were the Commissioner of the division.

14. Collector of the district.—The [State Government]⁸⁸ shall appoint in each district an officer who shall be the Collector of the district, and who shall, throughout his district, exercise all the powers and discharge all the duties conferred and imposed on a Collector by this Act or any other law for the time being in force.

Note:—An officer not legally authorised to grant sanction, acts without authority in granting permission for a private sale⁹⁰.

14-A^{88a}. Appointment, powers and duties of Additional Collectors.—(1) The [State Government]⁸⁹ may appoint an Additional Collector in a district or in two or more districts combined.

(2) An Additional Collector shall hold his office during the pleasure of the [State Government]⁸⁹.

(3) An Additional Collector shall exercise such powers and perform such duties of a Collector in such cases or classes of cases as the [State Government]⁸⁹ or, in the absence of orders from the [State Government]⁸⁹ the Commissioner concerned, may direct.

(4) This Act and every other law for the time being applicable to a Collector shall apply to every Additional Collector, when exercising

86. The words "subject to the control of the Board" *omit.* by S. 2 and Sch. of U. P. Act XII of 1922.

87. For appointment of Deputy Commissioner, Naini Tal, as Commissioner, Kumaun Division, in addition to his own duties, *see* Not. No. 180-R/I—345, d. May 19, 1937, in *Gaz.*, 1937, Pt. I, P. 1068.

88. The words "with the previous

sanction of the G. G. in C." *omit.* by S. 2 and Sch. I of Act XXXVIII of 1920.

89. *Subs.* by the A. O. 1950 for [Provl. Govt.] which had been *subs.* by the A. O. 1937 for [L. G.].

90. *Jang Bahadur Singh v. Ewar Mohd.* 1935 O 156=11 O. W. N. 1626.

88-a. S. 14-A by *ins.* S. 2 of U. P. Act III of 1920.

any powers or discharging any duties under sub-section (3) as if he were the Collector of the district.

15. Assistant Collectors.—(1) The [State Government]⁹³ may appoint to each district as many other persons as it thinks fit to be Assistant Collector of the first or second class.

(2) All such Assistant Collectors and all other revenue officers in the district, shall be subordinate to the Collector.

16. * * *⁹¹.

17. Tahsildar and Naib-Tahsildars.—The [State Government]⁹³ may appoint to each district as many persons as it may think fit to be Tahsildars and Naib-Tahsildars * * *⁹².

18. Assistant Collector in charge of sub-division of district.—(1) The [State Government]⁹³ may place any Assistant Collector of the first class in charge of one or more sub-divisions of a district, and may remove him therefrom.

(2) Such Assistant Collector shall be called an Assistant Collector in charge of a sub-division of a district and shall exercise all the powers and discharge all the duties conferred and imposed upon him by this Act, or by any other law for the time being in force, subject to the control of the Collector.

(3) The [State Government]⁹³ may delegate its powers under this section to the Collector of the district and may revoke such delegation.

19. Subordination of Revenue Officers.—Every Revenue Officer of a sub-division of a district shall be subordinate to the Assistant Collector (if any) in charge of such sub-division, subject to the general control of the Collector.

20. Collector of the district in case of temporary vacancy.—If the Collector dies or is disabled from performing his duties, the officer who succeeds temporarily to the chief executive administration of the district in revenue matters shall be held to be the Collector under this Act until the [State Government]⁹³ appoints a successor to the Collector so dying or disabled, and such successor takes charge of his appointment.

CHAPTER III

Maintenance of maps and records

(A) Kanungos and Patwaris

21. Power to form and alter ⁹⁴[Lekpal's] halkas.—The Collector, with the previous sanction of the [State Government]⁹³, may arrange the [villages]⁹⁵, of the district in [halkas]⁹⁶ and may, from time to time, alter the number and limits of such [halkas]⁹⁷.

91. S. 16 re. suspension or removal of officers *omit.* by A. O. 1937.

92. The words "and may suspend or remove such officers or any of them, or it may delegate its power of appointing, suspending, or removing them subject to such rules as the L. G. may prescribe" *omit.* by A. O. 1937.

93. *Subs.* by the A. O. 1950 for [Provl. Govt.] which had been *subs.* by the

A. O. 1937 for [L. G.].

94. *Subs.* for the word "Patwaris" by U. P. Land Reforms (Amend.) Act, 1956.

95. *Subs.* by S. 339 (c), Sch. III list II Sl. 1, of U. P. Act, 1 of 1951 for (Mahals).

96. *Subs.* by *ibid.* for [Patwaris' Circles].

97. *Subs.* by *ibid.* for [Circles].

But no such arrangement or alternation shall be final unless and until it has been sanctioned by the [State Government]⁹³.

Note.—Land Record Manual Chapter XI paragraphs 550 to 557 lay down the rules about the number and limit of Patwari's Circles or in the scale of pay. See also Boards Circular No. 8 dated 23rd September, 1862.

22. * * *⁹⁸.

⁹⁸[**23. Appointment of Lekhpals.**—The State Government shall appoint a Lekhpal to each *halka* for the preparation of records specified by or under the Act and for the purpose of such other duties as may be prescribed].

Note.—By Notifications Nos. 1756 and 1758 of the U. P. Government dated 17th July, 1937, the Collectors and Assistant Collectors have been empowered to appoint Patwaris. For rules regarding the appointments, qualifications, salaries, transfers, punishments, suspensions, removals and dismissals of Patwaris, see the Land Records Manual. The name of "Patwari" has now been changed in "Lekhpal," but this would not affect the validity of the Rules framed under Section 234 (b) ¹.

Principles of Appointment.—(1) Nomination or lambardars representing greater area of land in the circle should be preferred ², according to custom ³, (2) only first nomination to be considered unless fresh nominations are called ⁴, (3) where there is disagreement the principles given in the undermentioned cases to be followed ⁵, (4) no appointment to be made without a proclamation ⁶, (5) plot proprietors not to be heard ⁷.

Transfer.—For principles governing transfers see the undermentioned case ⁸. Transfer of a Patwari from one circle to another is not a punishment, and cannot be used as such ⁹. The power of transfer should be used sparingly ¹⁰, and a transfer on the complaint of the Zamindar should not be made without enquiry ¹¹. The transfer of a Patwari by the Collector raises a presumption that he had satisfied himself that the transfer was necessary ¹².

Punishment : Procedure.—Rules which govern the punishment of Government servants in general must be observed carefully ¹³. A Patwari like any other Government servant is entitled to have definite charges framed against him and if the evidence of any witness is used against him he is entitled to cross-examine the witness in open court ¹⁴. Commissioner can direct attention of the Collector about a disciplinary action to be taken against a Patwari but the Collector has the discretion to act, as he thinks proper, because he is primarily responsible for the maintenance of land records and discipline of Patwaris ¹⁵.

"Removal" and "Dismissal"—Distinction.—A removed Patwari may get himself re-nominated in another circle, but a dismissed patwari cannot ¹⁶. Tender

98. S. 22 relating to salaries of patwaris omit. by the A. O. 1937.

99. Subs. by U. P. Land Reforms (Amend.) Act, 1956.

1. *Banarsi Das v. State of U. P.* 1954 A 813.

2. *Bhagwati Prashad v. Banke Bahadur*, 1936 R. D. 221. But see *Naurang Singh v. Kalka Singh* 1938 R. D. 128.

3. *Chinman Lal v. Kalah Navain Lal*, 6 R. D. 138. *Manohar Lal v. King Emperor*, 3 R. D. 15.

4. *Naurang Singh v. Kalka Singh*, 1938 R. D. 128.

5. *Rameshwar Prasad v. Raghubar Prasad*, 1938 R. D. 181; *Harbars Singh v. Mohd. M. Nafsa Haider*, 1935 R. D. 509; *Bhag Mal v. Akhai Ram*, 1936 R. D. 326; *Ali Kausar v. Khan Singh*, 1935 R. D. 330; *Balwant Singh v. Mehar Chand*, 1936 R. D. 469 see also *Hazari Prasad v. Girja Prasad*, 18 R. D. 451; *S. P. Dubey v. G. S. Das*, 1941 R. D. 108; *R. N. Pathak v. Sheo Pujan Lal*, 1941 R. D. 872.

6. *Danobar Singh v. Ram Gopal*, 1939

R. D. 597.

7. *Jainti Prashad v. Jagmohan Lal*, 18 R. D. 608.

8. *Damodar Prasad v. Chandi Prasad* 1936 R. D. 23, *Banwari Lal v. King Emperor*, 1936 R. D. 167; *Suraj Bansi Lal v. Bishwa Nath*, 1937 R. D. 447; *Shyam Behari Lal v. K.E.* 1938 R. D. 164.

9. *Suraj Bansi Lal v. Bishwa Nath Chakravarty* 1937 R. D. 447; *Ram Shankar Lal v. Tilakdhari* 1937 R. D. 57.

10. *Damodar Prasad v. Chandi Prasad*, 1936 R. D. 23.

11. *Banwari Lal v. King Emperor*, 1936 R. D. 167.

12. *Ibid.*

13. *Mazhar Husain Khan v. Emperor*, 1939 R. D. 79.

14. *Bhagwan Swarup v. King Emperor*, 1939 R. D. 572; *Sri Ram Mishra v. King Emperor*, 1940 R. D. 564.

15. *Bhargunath Lal v. Narbadeshwar Prasad*, 1935 R. D. 55.

16. *Brij Kishore v. Lalia Prasad*, 5 R. D. 495.

and acceptance of resignation amounts to removal, and the Assistant Collector has no right to add to the order that the Patwari is not to be re-employed¹⁷. It is no ground for dismissal that an ex-Patwari helps his son in writing papers¹⁸, nor an omission to do partial due to laziness¹⁹, or the sins of his father²⁰.

Appeal.—In the case of punishment, Zamindar or public have no right of appeal²¹. In appeal a more severe order cannot be passed, of course the case can be reported under Section 218, U. P. Land Revenue Act²².

24.

*23

25. Appointment of kanungos.—One or more kanungos may²⁴ [* * *] be appointed in each district for the proper supervision, maintenance, and correction of the annual registers, and for such other duties at the [State Government]²⁵ may, from time to time, prescribe.

Kanungos.—There are three classes of Kanungos : (1) Registrar Kanungos (2) Supervisor Kanungos and (3) Sadar Kanungos. Their duties are given in part II of the Land Records Manual. A Kanungo can decide undisputed cases of entries in patwari's papers but he cannot correct entries without informing the parties²⁶. If a Kanungo is found not to have acted *malafide* but there is evidence of bad work, he should be removed not dismissed²⁷. Appeal against an order of punishment would lie to the Board²⁸.

26. * * * 29.

27. Kanungos and Patwaris to be public servants, and their records public records.—Every kanungo and patwari and every person appointed temporarily to discharge the duties of any such officer shall be deemed to be a public servant within the meaning of the Indian Penal Code and all official records and [documents]³⁰ kept by any other officer shall be held to be public records and the property of [the State Government].³¹

Note.—The Khasra is a public document³². Entries about terms of a mortgage in a Khasra are admissible to prove a mortgage³³, as the entries are to be presumed correct unless rebutted³⁴. The remarks of Settlement Officers about a village at the time of inspection of public documents are admissible under Section 35, Indian Evidence Act³⁵. However a mere entry of a person's name as an occupancy tenant in the Khasra is not sufficient to prove that the Zamindar admitted him as such³⁶.

(B) Maps

28. Maintenance of map and field-book.—The Collector shall in accordance with rules made under Section 234, maintain a map and field-book of each village in his district and shall cause annually, or at

17. *Choubarija Prasad v. King Emperor*, 1937 R. D. 446.

18. *Mazhar Husain Khan v. Emperor*, 1939 R. D. 79.

19. *Sheo Shankar Lal, v. King Emperor*, 1941 R. D. 397.

20. *Mazhar Husain Khan v. Emperor*, 1939 R. D. 79.

21. *Nitanand v. Roop Narain*, 1937 R. D. 129.

22. *Nogeshar Sahai v. Mata Prasad*, 4 R. D. 502.

23. S. 24 relating to nomination and appointment of patwaris to fill vacancies *omit.* by A. O. 1937.

24. Deleted by U. P. Land Reforms (Amend.) Act, 1955.

25. Subs. by the A. O. 1950 for (Provl. Govt.) which had been subs. by the A. O. 1937 for (Board) by S. 2 and Sch. of U. P. Act XII of 1922, as adapted by the A. O. 1937.

26. *Hari Har Datt Singh v. Sukhraj Singh*,

18 R. D. 510.

27. *Jwala Singh v. King Emperor*, 1937 R. D. 80.

28. *Har Scrub Jauhari v. Bhagwan Bharose*, 18 R. D. 162.

29. S. 26 relating to salaries of kanungos *omit.* by *ibid.*

30. Subs. by S. 339 (c), Sch. III, list II Sl. 3 of U. P. Act 1 of 1951 for [papers].

31. Subs. by *ibid.* for [Crown] which had been subs. by the A. O. 1937 for [Govt.].

32. *Daljit v. Pratab*, 3 O. C. 205.

33. *Balak Dasundhi v. D. C. Faizabad*, 9 R. D. 450.

34. *Sumera v. Madan Lal*, 7 R. D. 375; *Kurey Singh v. Debi Dayal*, 18 R. D. 423.

35. *Sheo Bahadur Singh v. Bishunath*, 4 O. W. N. 15.

36. *Sumera v. Lala Madanlal*, 7 R. D. 375.

such longer intervals as the [State Government]²⁵ may prescribe, to be recorded therein all changes in the boundaries of each village * * * ³⁷ or field and shall correct any errors which are shown to have been made in such map or field-book.

Village-meaning.—"Land within a well defined ring-fence" ³⁸, a definite area of land with houses upon it ³⁹.

Evidence.—An entry in survey records raises a presumption of correctness unless rebutted ⁴⁰.

29. Obligations of owners as to boundary marks.—(1) It shall be the duty of every tenure-holder to maintain and keep in repair at his cost the permanent boundary marks lawfully erected on his fields.

(2) It shall be the duty of the *Gaon Sabha* to maintain and keep in repair at its cost the permanent boundary marks lawfully erected on the village situate within its jurisdiction.

(3) The Collector may at any time order, as the case may be, a *Gaon Sabha* or tenure-holder—

(a) to erect proper boundary marks on such villages or fields ;

(b) to repair or renew in such form and nature as may be prescribed all boundary marks lawfully erected therein.⁴¹

Note.—For rules regarding the maintenance of boundary marks see paras 655 to 658, Land Records Manual. A boundary mark to be covered by this section must be made in pursuance of law and erected by the authority of a public servant⁴². It is not desirable to demarcate boundaries while a Civil suit is pending⁴³. An application under this section is not usually made unless a dispute has arisen⁴⁴. The section applies also to land situate in a city like Agra⁴⁵.

30. Penalty for injury to, or removal of, marks.—The Collector may order any person convicted before him of wilfully erasing, removing or damaging a boundary, or survey mark to pay such sum, not exceeding fifty rupees for each mark so erased, removed, or damaged, as may be necessary to restore it, and to reward the informer through whom the conviction was obtained. When such sum cannot be recovered, or if the offender cannot be discovered, the Collector shall restore the mark and recover the cost thereof from such of [tenure-holder or *Gaon Sabhas* of co-terminous fields or villages as the case may be]⁴⁶ as he thinks fit.

(C) Registers

31. List of villages.—[The Collector shall prepare and maintain in the prescribed form a list of all villages and will show there in the prescribed manner the areas—

(a) liable to fluvial action,

(b) having precarious cultivation, and

(c) the revenue whereof has either, wholly or in part been released, compounded, redeemed or assigned.

Such registers shall be revised every five years in accordance with the rules framed in that behalf.⁴⁷

37. The word [Mahal] omit. by S. 339 (c), Sch. III, list II, Sl. 4 of U. P. Act I of 1951.

38. *Ghure v. Man Singh*, 17 A. 226.

39. *Gokul Singh v. Manna Lal*, 7 A. 771; *Auseri Lal v. Ram Bhajan Lal*, 27 A. 602.

40. *K. N. Singh v. A. Singh*, 18 R. D. 523 (P. C.); *J. N. Roy v. Secretary of State*, 3 O. C. 291.

41. Subs. by Sl. 5 *ibid*.

42. *Rameshwar v. K. E.*, 27 A. 300.

43. 1940 R. D. 480.

44. *Rukha v. Kuar Dhaken Lal*, 4 R. D. 333.

45. *Ewaz Ali Beg v. Amir Ullah*, 7 R. D. 381.

46. Subs. by Sl. 6 *ibid*. for [the owners of the co-terminous villages, mahals or fields].

47. Subs. by S. 339 (c), Sch. III, List II Sl. 7 of U. P. Act I of 1951.

32. Record-of-rights.—[There shall be a record-of-rights for each village subject to such exceptions as may be prescribed by rules made under the provisions of Section 234. The record-of-rights shall consist of a register of all persons cultivating or otherwise occupying land specifying the particulars required by Section 55.]⁴⁸

Note.—This section has been considerably changed as a result of the abolition of Zamindari, and much of the commentary may be useless in future. It has, however, been retained, in order to facilitate the interpretation of the old section, which is also given below :

Record-of-rights.—There shall be a record-of-rights for each mahal, or, if a mahal consists two or more villages or portions of villages, the record may be prepared for each such village or portion separately.

[Subject to such exceptions as may be prescribed by rules made under the provisions of Section 234] the record-of-rights shall include the following registers :

- (a) a register of all the proprietors in the mahal, including the proprietors of specific areas, specifying the nature and extent of the interest of each ;
- (b) in Oudh, for all mahals or patts held in sub-settlement or under a heritable non-transferable lease, the rent payable under which has been fixed by the Settlement Officer or other competent authority, a register of all the under-proprietary co-sharers or co-lessees, specifying the nature and extent of the interest of each of them ;
- (c) in Oudh, register of all other under-proprietors in a mahal, and all other lessees whose rents have been fixed by a Settlement Officer or other competent authority, specifying the nature and extent of the interest of each of them ;
- (d) a register of all persons holding land revenue-free, specifying the nature and extent of the interest of each ;
- (e) a register of all persons cultivating or otherwise occupying land, specifying the particulars required by Section 55.

Until a new record-of-rights is framed under Section 53, the existing record-of-rights shall be the record-of-rights prescribed by this section.

Explanation.—In this section the words "proprietor" and "under-proprietor" include a person in possession of proprietary or under-proprietary rights under a mortgage or lease.

Khewat.—is a register of proprietary rights, including the proprietors of specific areas⁴⁹, and if there is a limited interest with remainder, both the interests should be shown in the Khewat⁵⁰. The entries in Khewat are *prima facie* proof of matters to which they relate, but confer no title⁵¹, although they are a *prima facie* evidence of title as a co-sharer in pre-emption cases⁵². The entries raise a *prima facie* presumption of possession⁵³. The value to be ascribed to entries is generally that of *contemporanea expositio*⁵⁴, as they are made as a result of "fiscal enquiries"⁵⁵. However in profit cases the entries must be given effect to⁵⁶.

Khewat—Persons entitled.—The persons entitled to entry in Khewat are : (1) Proprietors of specific plots, (2) mortgagees with possession, (3) lessees of proprietary or under-proprietary rights, (4) Tlickadars⁵⁷, (5) persons with limited interest⁵⁸, (6) Guzaradars in Oudh⁵⁹, (7) sub-proprietors under a permanent lease⁶⁰, (8) persons

48. Subs. by Sl. 3, *ibid*.

49. *Lachman Prasad v. Farukh Begam*, 7 R. D. 417.

50. *Harnarain Dass v. Hari Saran Dass*, 15 R. D. 457.

51. *Bisheshwar v. Shadi Lal*, 1926 O 254.

52. *Abdul Hafiz v. Manohar Lal*, 1939 R. D. 455=1939 O. W. N. 736=1939 O 233.

53. *Bhagwan Dei v. Shib Singh*, 1930 A 311.

54. *Chotey Lal v. Iqbal Narain*, 6 U. D. 353; *Thakur v. Thakur*, 3 O. W. N. 623.

55. *Nirman Singh v. Rudra Pratab Narain*

Singh, 10 R. D. 241 (P. C.). See also *Rasulan Bibi v. Nend Lal*, 14 R. D. 460; and 18 R. D. 574.

56. *Durga Prasad v. Hazari*, 33 A. 799 (F. B.); *M. Ishaq v. Jafar*, 13 R. D. 263.

57. *Udit Narain Singh v. Mubarak Ali*, 13 R. D. 159; *Mohd. Asghar v. Nawab Ali*, 1935 R. D. 364.

58. *Chunni Lal v. Sheo Kumar*, 17 R. D. 1030.

59. *Rameshwar Bux Singh v. Lol Maneshwar Bux Singh*, 13 R. D. 8 3.

60. *Lachman Dass v. Sandal Singh*, 17 R. D. 744.

holding in adverse possession ⁶¹, (g) a reversioner ⁶².

Not entitled to entry.—The following persons are not entitled to have their names in the Khewat : (1) Shanklapdan land ⁶³, (2) persons basing their claims on possession only ⁶⁴, (3) persons to whom the proprietors may be under a civil obligations to pay allowance ⁶⁵, (4) Thekadars holding jungle clearing lease on special terms ⁶⁶; persons in possession of property of absent proprietors ⁶⁷.

Khitauni.—is a register containing the entries enjoined under Section 55 *infra* in respect of persons cultivating or otherwise occupying the land. Land is not defined in the Act, and therefore a person in possession of the compound of a bungalow will be shown in the Khitauni ⁶⁸, so also groves, and the ownership of the trees of the grove ⁶⁹. Trespassers against a sir-holder are also to be shown in Khitauni ⁷⁰. A Khasra is not a record-of-rights and an entry in Khasra is not entitled to be given the weight which has to be given to entries in the Khitauni ⁷¹.

Presumption.—There is a legal presumption attached to all entries in the record-of-rights prepared in accordance with Chapter IV (*vide* Section 57.) The entries are a *prima facie* evidence of the matters to which they relate ⁷²; and raise a presumption of possession ⁷³. No presumption of correctness attaches to Patwari paper entries unless they are old ⁷⁴.

Revenue Court Decisions—Effect.—The decisions of a Revenue Court as regards an entry in the register mentioned in Section 32 (e) even with respect to a grove cannot be challenged in a Civil Court ⁷⁵, as these entries relate to persons cultivating or otherwise occupying the land and the final decision in such cases rests with the revenue authorities ⁷⁶. The proviso to Section 44 applies to Khewat entries only and not to Khitauni. The disputes about Khewat entries under Section 40 after a summary enquiry while those regarding Khitauni are decided under Section 42, with a procedure laid down in clause (2) as the final decision of the latter disputes is vested in Revenue Courts and not in the Civil Courts ⁷⁷. Entries with respect to grove ⁷⁸, and Sir or Khudkasht lands ⁷⁹ are to be made in the Khitauni.

33. The annual registers.—(1) The Collector shall maintain the record-of-rights, and for that purpose shall annually, or at such longer intervals as the [State Government] ⁸⁰ may prescribe, cause to be prepared an amended [register mentioned in Section 32.] ⁸¹

The [register] ⁸² so prepared shall be called the annual register.

(2) The Collector shall cause to be recorded in the annual [register] ⁸² all changes that may take place and any transaction that may affect any of the rights or interests recorded and shall therein correct any errors proved to have been made in the record-of-rights or in any annual register previously prepared.

61. *Chandoo Lal v. Jal Singh*, 13 R. D. 514; but not adverse possession of a tenant, *Sat Narain Mishra v. Deputy Commissioner*, 13 R. D. 107.

62. *Har Narain Das v. Hari Saran Das*, 15 R. D. 457; 15 R. D. 690.

63. *Balbhadra Singh v. Data Ram*, 2 R. D. 402.

64. *Lachman Prasad v. Farukh Begam*, 7 R. D. 417.

65. *Unmedi Kuer v. Desraj*, S. D. 3 of 1918=1 R. D. 363.

66. *Bhagwan Dutt Singh v. Court of Wards*, 16 R. D. 515.

67. *Rituraj v. Dip Narain Tiwari*, 6 R. D. 91.

68. *Laik Ram v. Mahendra Man Singh*, 4 U. D. 111.

69. *Jagamath v. Hanwan Singh*, 2 U. D. 592.

70. *Ram Kirpal v. Lalman*, 1942 R. D. 417; *Maharaji v. B. Rai*, 1942 R. D. 496.

71. *Moolchand v. Bisram*, 1951 R. D. 98=1951 A. W. R. 125 (Rev.)

72. *Bisheshar v. Shadi Lal*, 1926 O 254.

73. *Bhagwan Dei v. Shib Singh*, 1930 A 311.

74. *Sripal Shukla v. Shambhao Datt Misra*, 1941 R. D. 1085.

75. *Ram Darshan v. Hari Shankar*, 1943 O 260; But see *Avadesh Singh v. Lachman Singh*, 17 R. D. 985=10 O. W. N. 1138=1933 O 514.

76. *Sarbati v. Zaminpal*, 17 R. D. 549=1933 A 921.

77. *Bhagwan Singh v. Kesri*, S. D. 12 of 1913; *Sudarshan v. Pirthi*, 13 R. D. 152; *Jang Bahadur v. Sat Narain*, 4 O. W. N. 681.

78. *Baldeo v. Bindeshwari*, 7 U. D. 212.

79. *Ram Sunder v. Jang Bahadur*, 3 U. P. L. R. 70; *Maharaji v. Bindeshwari Lal*, 1942 R. D. 496.

80. Subs. by A. O. 1950 for (Provl. Govt.) which had been subs. for "Board" by S. 2 and Sch. of U. P. Act XII of 1922, as adapted by the A. O. 1937.

81. Subs. by S. 339 (i) Sch. III, List II, Sl. 9 (a) of U. P. Act I of 1951 for [set of the registers enumerated in Section 32].

82. Subs. by Sl. 9 (b) *ibid.* for [registers].

(3) [No such change or transaction shall be recorded without the order of the Collector or as hereinafter provided, of the Tahsildar or the *Panchayati Adalat* as constituted under Section 42 of the United Provinces *Panchayati Raj Act*, 1947.]⁸³

Scope and Applicability.—This section deals with obvious errors and mistakes, particularly errors of a clerical nature and not mistakes involving a long drawn out dispute⁸⁴, but it can also cover cases where registered surrender deeds show that the executants name was *farzi* and the property has been in possession of another⁸⁵. Where there is no allegation that the original entry was wrongly made,⁸⁶ where proper and regular mutation proceedings have been made⁸⁷, and where an entry has stood through a long course of time⁸⁸, the entry cannot be corrected. It is necessary that the copies of the annual registers sought to be corrected are produced⁸⁹. Correction sought on basis of old transactions are not maintainable⁹⁰. A dispute between co-tenants as to whether some of them are co-tenants or sub-tenants can be decided under this section⁹¹. An entry held by the High Court to be wrong can be corrected⁹². Section 32 (2) contemplates cases where there is no dispute⁹³. Collector cannot review the decision of another Court⁹⁴. Correction cases not to be used for purposes provided by regular suits⁹⁵.

Record-of-Rights and Annual Register.—The Record Officer prepares the record-of-rights while annual registers are a set of those very registers wherein all changes are annually noted. In some districts Chausala system has been introduced and the same set of registers are continued for four years and annual registers noted thereon. The patwari's papers at quinquennial settlement are annual registers and can be corrected⁹⁶. Old settlement entries cannot be discarded in favour of new⁹⁷.

Order-Effect.—An order of correction is not *resjudicata*⁹⁸. Where in correction proceedings the rents of various tenants are raised without the requirements of Section 98 of the U. P. Tenancy Act being complied with, the order is without jurisdiction⁹⁹. A mere entry in Khitauni that a tenant holds a seven years' registered lease is no evidence of the right if the lease does not exist or is not produced¹. If order not having effect to for number of years fresh proceeding should be taken².

Limitation.—There is no limitation³.

Changes-meaning.—The word "Changes" is no doubt a wide term but it is immediately restricted by the words "succession or transfer" under Section 34. This means that changes arising from succession or transfer have got to be dealt with under Section 34 and not under Section 33 (2) which deals with changes in annual papers generally⁴.

83. Subs. by S. 339 (c), Sch. III, List II. Sl. 9 (), of U. P. Act I of 1951.

84. *Ram Das v. Jagnarain*, 10 U. D. 23=13 R. D. 186; 1930 A 300; 14 R. D. 63, See also 17 R. D. 58 for contra; and also *D. Prasad v. P. Prasad*, 18 R. D. 52 (54); *Jalesar v. Girdhari Rai*, 1936 R. D. 370; *Sri Narain v. Reoti Kunwar*, 1941 R. D. 821; A. P. *Singh v. P. P. Singh*, 1941 R. D. 1068.

85. *Shyam Sunder v. Gaiinda*, 1948 R. D. 194.

86. 5 U. D. 219.

87. *Naubahar Singh v. Krishna Kuar* S. D. 4 of 1920, But See *Vidyavati v. Kunj Behari Lal*, 1938 R. D. 266.

88. *Dharam Singh v. Bansi*, 1938 R. D. 863; *Parmanand Gir v. Uma Kinker*, 1949 R. D. 4; *Ram Hazari v. Sheo Ambar Singh*, 1947 A. W. R. 146 (Rev.) But see *Niadri v. Debi Sahai*, 1952 R. D. 393=1952 A. L. J. 300 (R).

89. 1941 A. W. R. 60 (Rev.)

90. *Bijai Bahadur Singh v. Achaihar Singh*, 1938 R. D. 305.

91. *Ram Lakkan Singh v. Sarju Prasad*, 1935 R. D. 124.

92. 1941 A. W. R. 260.

93. *Ram Jas v. Ram Harakh*, 1929 A. L. J. 1257.

94. *Chinkoo Chamar v. Abdul Ghaffoor* 6 R. D. 33.

95. *Bashir Ahmad v. Mohd. Ali*, 1933 R. D. 72; *Bhagwati Devi v. Abdul Karim*, 1937 R. D. 519.

96. *Mahabir Prasad v. Ajodhia Estate*, 7 R. D. 361.

97. *Dalip Singh v. Bhikhari Kurmi*, 1942 R. D. 200.

98. *Ram Jas Singh v. Ram Harakh Pandey*, 14 R. D. 28, But See *Raghubar Dayal v. Bhagwan Din*, 15 R. D. 720; *Katwaroo Singh v. Sukhan Pande*, 6 R. D. 162; *Bhoop Ram v. Mathura*, 1951 R. D. 16=1951 A. W. R. 15 (Rev.)

99. *Brij Mohan Narain v. Kaul*, 1949 R. D. 25.

1. *Chidey Khan v. Murad Khan*, 7 R. D. 122; *Jasharan Rai v. Tamai*, 4 R. D. 344, See also *Sarju Tewari v. Hira Lal*, 7 R. D. 289.

2. *Abdul Rahman, v. Kesho Singh*, 1947 A. W. R. 55 (Rev.)

3. *Maiku v. Maheshwar*, 6 R. D. 505=4 U. D. 308.

4. *Ram Hazari v. Sheo Amber Singh*, 1947 A. W. R. 146 (Rev.)

Transaction.—A transaction which creates merely a civil obligation need not be entered and if entered, to be corrected⁶. Private partition by arbitration or compromise and will or surrender of holding are instances of transactions⁶. Correction sought on the basis of old transaction is not maintainable⁷. A preliminary decree in a partition case is a transaction⁸. The findings of a Civil Court in a profit suit between altogether different parties is not a change⁹. Submerged land re-appearing¹⁰.

Presumption.—It is only an entry made under Section 33 (3) that attracts the statutory presumption of correctness under Section 44¹¹. Presumption of ownership of land in deity, when a mosque is a century old¹². Where entry made at a revision of records differs from the entry at the preceding years the presumption is that the previous entry was wrong¹³.

34. Report of succession or transfer of possession.—¹⁴[(1) Every person obtaining possession by succession or transfer of any land in a village which is required to be recorded in the register specified in Section 32 shall report such succession or transfer to the [Tahsildar of the Tahsil in which the land is situate].¹⁵

(2) In the case of a succession or transfer, other than a * * *¹⁶ lease, the report shall be made immediately after it has taken place.

(3) In the case of a * * * lease the report shall be made immediately after the * * *¹⁷ lessee has obtained possession thereunder.

(4) If the person so succeeding, or otherwise obtaining possession, is a minor or otherwise disqualified, the guardian or other person who has charge of his property shall make the report required by this section.

(5) No Revenue Court shall entertain a suit or application by the person so succeeding or otherwise obtaining possession until such person has made the report required by this section.

[*Explanation.*—The word “transfer” includes a family settlement by which the¹⁸ [holding] or part of the recorded in [holding]¹⁸ the¹⁹ [record of rights] in the name of one or more members of that family is declared to belong to another or other members]²⁰ [or in exchange of holding under Section 162 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1951].²¹

Scope and Effect.—The opening words of Section 34 (1) made it clear that unless possession has been obtained by the person making the report, he would not be entitled to mutation. No distinction is made between transfers by way of mortgages, or leases, and transfers by way of succession. This would apply to a Thekadar as well²². Where on the death of a Thekadar his sons apply for substitution, the case falls under Section 34 and not Section 39.

Mutation.—A report for mutation has to be made in view of Section 34 (5). It must be made within three months from the date of succession or transfer and in case

5. *Umedi Kuer Deshraj*, S. D. 3 of 1918.

6. *Ramzan Ali Khan v. Mohd. Qayum Khan*, 3 R. D. 500; *Ba-hanu v. Balasi*, 13 R. D. 502; *Bhuku v. Gargi Din*, 8 R. D. 254; *Ukha v. Bhagvandin*, 1940 R. D. 160; *Doongar Singh v. Baljit Singh*, 1936 R. D. 57.

7. *B. B. Singh v. A. Singh*, 1938 R. D. 305.

8. *Tulsi Ram v. Ramji Das*, 1942 R. D. 460.

9. *Ram Peari v. Din Prakash*, 1942 R. D. 104.

10. *D. N. Prasad v. P. Prasad*, 18 R. D. 52.

11. *Kesho Prasad Singh v. Bhagjagne Kuer*, 1937 P. C. 69.

12. *Mohd. Ejaz Rasul Khan v. Harnam Singh*, 1935 R. D. 30.

13. *Asharfi Lal v. Anwar Ahmad*, 1936 R. D. 124.

14. *Subs.* by S. 339 (c), Sch. III, List II, Sl. 10 (a) of U. P. Act I of 1951.

15. *Subs.* by U. P. Act XX of 1954.

16. The words [mortgage or] omit. by Sl. 10 (b), *ibid*.

17. The words “mortgagee or” deleted by U. P. Act XVI of 1956.

18. *Subs.* by Sl. 10 (c) (i) *ibid* for [proprietary share].

19. *Subs.* by Sl. 10 (c) (ii) *ibid* for [register of proprietors].

20. *Add.* by S. 4 of U. P. Act II of 1932.

21. *Add.* by S. 339 (c), Sch. III, List II, 10 (c) (ii), of U. P. Act I of 1951.

22. *Madho Prasad v. Sooraj Kuer*, 1949 R. D. 80; *Ramjit Ahir v. Ram Palat Tewari*, 1942 R. D. 369; *Udai Bhan v. Daigahi*, 27 O. C. 221 *Aditya Narain Singh v. K. E.*, 1938 R. D. 172; *Kubra Begum v. Salig Ram*, 1940 R. D. 254.

of mortgage or lease from the date of obtaining possession²³. The mutation proceedings are not judicial proceedings. They are in the nature of fiscal enquiries²⁴. They are of course proceedings within the meaning of Section 476, Criminal Procedure Code²⁵. There is a distinction in clauses (2) and (3). The person in whose favour succession or transfer has taken place is not bound to wait until he has actually obtained possession, because if possession is not proved or is doubtful, mutation can be made on the basis of title²⁶. If the mortgagee or lessee has not obtained possession he has no right to come to Revenue Court and claim mutation²⁷. The possession must be however on the date of dispute²⁸; it must not be of a rank trespasser²⁹; mutation once effected cannot be re-opened³⁰. The recitation in a deed of delivery of possession is of no avail to establish possession³¹. Mutation does not of itself create title and an agreement as to mutation is, as such, inoperative as to title³². Where an application for mutation is dismissed a second application does not lie³³, but if dismissed for non-delivery of possession, second application after possession is maintainable³⁴.

Report.—Section 34 clause (5) enjoins that until a report required by the section is made no Revenue Court shall entertain a suit or application by the person so succeeding or otherwise obtaining possession. This provision of the section is mandatory³⁵, and general in application applying both to transfers as well as to succession³⁶. The report made by the Patwari is not a substitute for the report which the Act requires to be made by the proprietor³⁷. As a rule separate reports in respect of separate mahals should be made. They may be consolidated and tried together³⁸. Each report must be accompanied by a copy of registers³⁹, and must be made within three months (vide Section 38). Delay may create liability for penalty, but is not fatal⁴⁰. It is not necessary for Section 34 (5) that name must be recorded in the Khewat, but a report must be made⁴¹. An assignee of the profits which had already accrued to the assignor is entitled to file a suit for profits without a report⁴². Absence of report does not prevent realisation of rent from tenant⁴³. The appointment of an Official Receiver is a transfer and report necessary⁴⁴. However a Collector taking possession under the Court of Wards Act is not bound to make the report⁴⁵.

Possession.—For mutation possession is necessary, a declaratory decree is insufficient⁴⁶, forcible possession not sufficient⁴⁷. Decree for possession by Civil Court not executed, no mutation can be made⁴⁸. Possession and not title to be the basis⁴⁹. Transferee from a mortgagee not in possession mutation refused⁵⁰.

Possession of one joint vendee is sufficient⁵¹. Transfer of possession by Civil

23. S. D. 2 of 1911; 2 U. D. 493; 1 991.

24. *Nirmal Singh v. Lal Rudra Pratab Narain Singh*, 10 R. D. 241 (P. C.); *Narain v. Desraj*, 11 R. D. 545; *Trilokli v. Ram Manorath*, 15 R. D. 375 (quasi judicial); 18 R. D. 356.

25. *Lachman Prasad Joshi v. Emperor*, 6 O. W. N. 953.

26. *Jyoti Prasad v. Balwant Singh*, 1 U. D. 9.

27. *Ballabh Das v. Jagannath*, S. D. 2 of 1911; S. D. 4 of 1909; 3 U. D. 36; 6 R. D. 511.

28. 4 U. D. 489.

29. 3 U. D. 2.

30. *Bhagwan v. Shiam Sunder*, 3 U. D. 38.

31. *Des Raj v. Ghulam Chisti*, 5 R. D. 257.

32. *Chokhey v. Jote Singh*, 36 I. A. 38= 31 A 73 (P. C.).

33. *Sukhdei v. Baqar Khan*, 18 R. D. 711 followed in 1936 R. D. 117.

34. *Kubra Begam v. Salig Ram*, 1946 R. D. 254; *Sheo Ratan Misir v. Girja Dayal*, 1941 R. D. 1036.

35. *Fazal v. Hasan*, 13 R. D. 433; *Parmeshwar v. Ramkishan Misra* 1942 R. D. 210.

36. *Udai Bhan v. Dargahi*, 1924 O 324= 27 O. C. 221.

37. *Ruqayya v. Imdad Ali*, 1924 O 329.

38. *Rudr Singh v. Tej Singh*, 6 R. D. 38. 1941 A. W. R. 260 (Rev.).

40. 1941 A. W. R. 545= 14 U. D. 231. It may without explanation be a strong argument against transfer, *Ram Bilas v. Munir Chand*, 1941 R. D. 537.

41. *Kalika Singh v. Sri Radha Krishnaji*, 1946 O 256. But see 1950 R. D. 58 which lays down that mutation order is not sufficient unless enforced in papers.

42. *Ashfaq Ali Khan v. Enayat Beg*, 1935 A 704= 1935 R. D. 300.

43. *Lal Behari v. Brahmdoo Pandey*, 1941 R. D. 296.

44. *Moti Ram v. Nand Lal*, 18 R. D. 430.

45. *Collector of Etawah v. Sangam Lal*, 1951 R D 117= 1951 A. W. R. 118 (Rev.).

46. *Bind Basni Prasad v. Ram Pati Dei*, 1941 R. D. 530.

47. *Bhanpratyal v. Biren Kuer*, 1941 R. D. 530.

48. *Tukman Singh v. Ganga Singh*, 18 R. D. 497.

49. *Abbas Khan v. Mohammad Ali*, 18 R. D. 121= 1934 A 300.

50. *Habib Ullah v. Kulbil*, 1936 R. D. 287.

51. *Ali Ahmad v. Bano Begam*, 1942 R. D. 125.

Court is sufficient though not actual physical possession ⁵².

Rules.—See Revenue Manual, paras 170 to 197.

53[35. Procedure on report.—(1) The Tahsildar on receiving a report under Section 34 or upon the facts coming otherwise to his knowledge may either direct the *Panchayati Adalat* to make such enquiry as appears necessary or may himself make such enquiry.

(2) The *Panchayati Adalat* shall upon the receipt of the directions from the Tahsildar make enquiries in the manner prescribed and shall submit them with its report to the Tahsildar.

(3) Where it appears from the enquiries made under sub-section (1) that—

(a) the succession or transfer has taken place and is not disputed, the Tahsildar shall direct the Annual Register to be amended accordingly; or

(b) the succession or transfer is disputed or the transfer is in contravention of the provisions of the U. P. Zamindari Abolition and Land Reforms Act, 1950, the Tahsildar shall refer the case to the Collector who shall dispose it of after deciding the dispute in accordance with the provisions of Section 40.]

Scope.—A Tahsildar can decide only undisputed cases. He has no jurisdiction to decide disputed cases ⁵⁴, or where ex-proprietary tenancy is claimed ⁵⁵, nor can he refer the dispute to arbitration ⁵⁶. There is a conflict with respect to the evidence recorded by the Tahsildar in disputed cases. In some cases it has been held that it is no evidence ⁵⁷, while in others the view taken is that the evidence taken by the Tahsildar can be considered by the Sub-Divisional Officer ⁵⁸. The true position in view of para 183 of the Revenue Manual appears to be that the Tahsildar may record the evidence, which the Sub-Divisional Officer may take into consideration in deciding the case.

36. * * *⁵⁹.

37. Power to prescribe fees for mutation.—(1) The [State Government]⁶⁰ may prescribe proper fees for mutation in the registers :

Provided that no fee for a single mutation shall exceed [five]⁶¹ rupees.

(2) Such fees shall be levied from the person in whose favour the mutation is made * * *⁶².

38. Fine for neglect to report.—Any person neglecting to make the report required by Section 34 within three months from the date of obtaining possession under a * * *⁶³ lease, or from the date of the succession or other transfer, shall be liable to a fine not exceeding five times the amount of the fee which would otherwise have been payable

52. *Mohammad Fazil v. Abdul Hai Ashraf*, 1942 R. D. 411.

53. *Subs.* by U. P. Act XX of 1954.

54. *Baijnath Upadhyaya v. Parbhu Nath*, 1938 R. D. 479. *See also* 1941 R. D. 110.

55. 6 U. D. 374.

56. *Shatrohan Pande v. Ram Ugrah Pande*, 2 R. D. 139.

57. *Wilayat Shah v. Wahid Shah*, 5 R. D. 292; 2 R. D. 139.

58. *Munshi Singh v. Chedi Lal* S. D. 15 of 1921.

59. S. 36 *omit.* by Sl. 12 *ibid.*

60. *Subs.* by the A. O. 1950 for (Provl. Govt.) which had been *subs.* by the

A. O. 1937 for (L. G.).

61. *Subs.* by S. 339 (c), Sch. III, list II, Sl. 13, for the words [one hundred].

62. The words "and shall be expended in such manner as the Provincial Govt. thinks fit", as adapted by A. O. 1937 *omit.* by S. 10 of U. P. Act XI of 1941, made by the Governor in exercise of the powers assumed by him under S. 93 of G. of I Act, 1935, as continued by U. P. Act XIII of 1948.

63. The words [mortgage or] *del.* by S. 399 (c), Sch. III, list II, Sl. 14 of U. P. Act I of 1951.

under Section 37, or, when no fee is leviable, then not exceeding such amount as the [State Government]⁶⁴ may by rule prescribe.

Note.—For Rules under this section see Notification No. 196/11-412A, dated March 15, 1910 and No. 300/11-412A, dated May 5, 1910, in Gazette, 1910, Pt. II pp. 435 and 752, respectively.

Fine.—Para 958 prescribes the fines leviable. They may be remitted by the Collector or the Assistant Collector in charge of a sub-division. A Receiver is not liable to pay fine if he neglects to report⁶⁵. An application for removal of lessee's name is also not chargeable with fine⁶⁶.

[39. Correction of mistakes in the annual register.—Notwithstanding anything contained in the U. P. Panchayat Raj Act, 1947, the Collector may, on his own motion and shall, on the application of any person, correct any error or omission in the annual register.]

Scope.—This section governs transfers and changes other than those mentioned in Section 34 *i.e.*, while this section governs entries in Khitauni Section 34 governs those in Khewat. Proprietary rights in Sir and khudkasht are also entered in Khitauni, and this section governs entries with respect to them as well. Where entries come down from settlement they should not be disturbed unless adjudicated by a regular suit⁶⁸. However, entries subsequent to the settlement and not corroborated by evidence can be corrected⁶⁹. The Patwari can report about the anomalies in papers⁷⁰. Proceedings under the section are judicial⁷¹. For rules under Section 234 see Chapter XXII of the Revenue Court Manual. Under this section entries in Khasra can also be corrected⁷². It is the pleadings that determine the applicability of Section 39 or 42⁷³. Mistake must be shown to be obvious⁷⁴.

Disputed Cases.—Sub-section (2) deals with disputed cases. But long drawn out disputes of co-tenancy cannot be settled by correction proceedings⁷⁵, nor where it involves the decision of a long drawn question of title⁷⁶. The Tahsildars are empowered to receive the application (Para 199), make an enquiry, but the final orders can be passed only by the S. D. O. The enquiry must be directed towards possession, as all disputes in correction cases should be decided on the basis of possession⁷⁷. If, however, the title of the applicant is admitted, his application cannot be thrown out on the ground that he is not in actual possession but only in constructive possession⁷⁸.

Jurisdiction.—In view of para 199 of the Revenue Court Manual a Tahsildar has powers to entertain applications, but the final order shall be passed by the Collector⁷⁹. Certain plots not included in the lease entered in the name of tenant, Revenue Court has jurisdiction to correct it⁸⁰. The Revenue Court must give effect to Civil Court decree⁸¹. Under Section 227, Land Revenue Act, an Assistant Collector in charge of a sub-division has powers of a Collector, while under Section 228, other Assistant Collectors of first class can exercise these powers if delegated to them

64. Subs. by the A. O. 1950 for (Provl. Govt.) which had been subs. for [Board] by S. 2 and Sch. of U. P. Act XII of 1922, as adapted by the A. O. 1937.
65. *Prag Nath v. Bhajan Lal*, S. D. 3 of 1936=1934 R. D. 236.
66. *Aditya Narain Singh Bahadur v. Emperor*, 1938 R. D. 172.
67. Subs. by Sch. of U. P. Act XVI of 1953.
68. *Raj Bali v. Ram Bachan*, 1939 R. D. 95; *Brij Bhushan v. Parbati*, 1939 R. D. 45 see also *Pirbhu v. Pratab Singh*, 1938 R. D. 418 and 1941 R. D. 539.
69. *Jhillar v. Bechai*, 1941 R. D. 539.
70. *Muneshwar Rai v. Shamrati Rai*, 1949 R. D. 225.
71. Notification No. 5811/1 A, 44 dated 21-6-1923.
72. *Suraj Bux Singh v. Sarju Lonia*, 1942 R. D. 233.

73. *Basharan v. Shahzad Khan*, 1938 R. D. 837. See also *Mal Khan v. Asa Ram*, 1938 R. D. 192; *Qamarunnissa v. Manager, Court of Wards* 1937 R. D. 190.
74. *Bahadur Singh v. Jalpa Singh*, 1941 R. D. 368.
75. *Raj Bahadur v. Ram Kishore*, 1938 R. D. 244.
76. *Muneshwar Rai v. Shamrati Rai*, 1949 R. D. 225. See also *Bahadur Singh v. Jalpa Singh*, 1941 R. D. 367; *Pragi v. Phula*, 1941 R. D. 375.
77. *Khuman Kunwar v. Ram Piari*, 1936 R. D. 25; *Bhagwant Tewari v. Ramanuj Tewari*, 1935 R. D. 470.
78. *Har Bans v. Mst. Niadri*, 1952 R. D. 239.
79. *Pragi v. Phula*, 1941 R. D. 375. See also *Tahera v. Alia Bibi*, 1941 R. D. 31.
80. *Bharat Singh v. Riati Kunwar*, 1937 R. D. 118.
81. *Teja v. Ramla*, 1937 R. D. 9.

by the Collector ⁸². Mortgage unredeemed, the question if mortgage is void beyond jurisdiction ⁸³.

Decisions.—A decision under this section must state all the facts, the points in dispute and finding on those points ⁸⁴. Decisions whether a person is tenant or not are not conclusive ⁸⁵. A brother of a tenant entered as co-tenant, the *ex parte* decision has no effect on co-tenancy ⁸⁶. A decision ordering the expunction of the name of a tenant can be challenged in a competent court ⁸⁷. The decision must be on the basis of possession ⁸⁸. A landlord being a party in a suit for division of holding is bound by the decision if it is by his consent ⁸⁹. The decision under this section is not *res judicata* ⁹⁰. Questions relating to admission of co-tenancy and principle of estoppel are not fit to be decided in summary proceedings ⁹¹. Where an entry is based on the mutation court's order it must be presumed to be correct and a person wishing to challenge it at a later stage should establish his title by a regular suit in a Civil Court ⁹².

40. Settlement of disputes as to entries in annual register.—(1) All disputes regarding entries in the annual registers shall be decided on the basis of possession.

(2) If in the course of inquiry into a dispute under this section the ⁹³[Collector or the] [Tahsildar] ⁹⁴ is unable to satisfy himself as to which party is in possession, he shall ascertain by summary inquiry who is the person best entitled to the property and shall put such person in possession.

(3) No order as to possession passed under this section shall debar any person from establishing his right to the property in any Civil or Revenue Court having jurisdiction.

[Explanation.—The term “possession” in this section means possession based on succession or transfer* * * .] ⁹⁴

Scope.—This section applies to disputed proceedings under Sections 32, 34 and 39. The word “dispute” means dispute inter parties. A dispute as to the class of tenure is outside this section and is governed by Section 42 ⁹⁵. The disputes under this section are decided on the basis of possession, and the orders passed do not operate as *res judicata* either in Civil Court or in the Revenue Court, even with regard to matters which relate to the tenancy and correction of Khitauni and Jamabandi ⁹⁶. The section means that the order of the Collector shall be final and shall not be challenged in any subsequent proceedings, but that would not prevent the aggrieved party from establishing his right in Civil or Revenue Court ⁹⁷.

Mutation—Effect.—Mutation does not confer title either under the Oudh Estates Act or under the general law ⁹⁸, as mutation proceedings are not judicial proceedings in which title to the proprietary rights in immovable property is determined; they are much more in the nature of fiscal enquiries instituted to ensure payment of reve-

82. *Badri Tewari v. Bachai Chamar*, 1938 R. D. 160.

83. *Gurdial Singh v. Madho Singh*, 1936 R. D. 136.

84. *Paragi v. Phula*, 1941 R. D. 375; *Tahera Bibi v. Alta Bibi*, 1941 R. D. 31.

85. *Jagaishar Ahir v. Jagrup Ahir*, 1936 R. D. 372.

86. *Ali Ahmed v. Niamatullah*, 1939 R. D. 58.

87. *Nanhey Khan v. Jahan Khan*, 1936 R. D. 540.

88. *Khuman Kunwar v. Ram Piari*, 1936 R. D. 25.

89. *Mohammad Jan v. Gulzari*, 18 R. D. 327.

90. *Tikai Chamar v. Mohd. Ibrahim Khan*, 1952 R. D. 127=1952 A. L. J. 109 =1951 A. W. R. 515.

91. *Man Chand v. Bhullan*, 1951 R. D. 264=1952 A. L. J. 21 (R)=1952 A. W. R. 2 (R).

92. *Thakur Prasad v. Ram Nath*, 1952 R. D. 78=1952 A. L. J. 70 (R)=1952 A. W. R. 120 (R).

93. *Subs.* by S. 339 (c), Sl. 16, list II, Sch. III of U. P. Act I of 1951 for [Collector].

94. *Add.* by S. 6 of U. P. Act II of 1932 and the words “or on such transfer and changes as are dealt with in Section 39” in it were deleted by U. P. Act XVI of 1953.

95. *Ram Jas Singh v. Ram Harakh Pandey*, 14 R. D. 28. But see *Bhagauti Prasad v. Chandika Prasad*, 1941 R. D. 566=1941 A 339.

96. *Bhagauti Prasad v. Chandrika Prasad*, 1941 R. D. 566=1941 A 339.

97. *Ranjit Mal v. Devi Prasad*, 1933 A 43=55 A 128=1933 A. L. J. 10.

98. *Mohd. Azim v. Mohd. Saadat Ali Khan*, 1931 O 177=8 O. W. N. 349; *Madho Singh v. Kalloo Singh*, 16 R. D. 547.

nue⁹⁹. The order of mutation would stand and be effective unless varied by a decree of a competent court¹.

Possession.—All disputes regarding entries in the annual registers are decided on the basis of possession². It may be even formal and constructive³, but it must be possession at the date of dispute⁴, or at the date of the institution of suit⁵, and not *pendente lite*⁶. The possession of a Lambardar, agent, Karinda, co-owner or co-sharer is not adverse⁷, nor of a receiver or trustee. In such cases the court has to see by summary enquiry as to who is best entitled to possession⁸. Possession must be based on a *prima facie* title⁹, it must have some basis in succession or transfer, and should not be that of a rank trespasser¹⁰. If such possession is clear question of title need not be gone into¹¹. A person obtaining formal possession on the basis of decree of a Civil Court is entitled to mutation¹², but a mere declaratory decree of a Civil Court is not sufficient¹³, nor a person not party is bound¹⁴. Vague statements of tenants and the production of receipts of a very much smaller sum than actually due would not establish possession¹⁵. In case of waste land evidence of title is sufficient to prove possession, but mere recitals in deeds of transfers are not sufficient to prove possession, there must be proof of actual possession¹⁶. A man can be in possession by cultivating himself or through tenants¹⁷.

Enquiry-Nature.—In disputed mutation cases the evidence recorded before the Tahsildar may be taken into consideration by the S. D. O.¹⁸. The evidence must be directed towards proving possession. It may be weak or strong, but the Revenue Courts must decide on which side the balance lies, and should not shirk their duty¹⁹. However the enquiry should be summary and should not be turned into an imitation of a regular suit²⁰, nor the Revenue Court should go into complicated questions of the rights of persons. It should merely ascertain whether the person claiming an entry has a sustainable title²¹, and must decide on the basis of possession²². The proceedings being summary the parties have been given a right to a civil or revenue suit to establish their title *e. g.* refusal to delete the name of a certain tenant does not bar a suit for ejectment²³. They are however judicial and a proper judgment should be written²⁴.

Decisions.—A finding in a correction of papers case that a party is not in possession is not binding in a subsequent suit²⁵, the order is not *res judicata* if it does not fall under Section 42²⁶. The decisions of Assistant Record Officers do not

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| 99. <i>Abbas Khan v. Muhammad Ali</i> , 1934 A 300; <i>Mata Baksh v. Ajodhya Buksh Singh</i> , 1936 O 340. | 13. <i>Ram Kishore Rai v. Kapil Deo Narain Singh</i> , 1942 R. D. 489. |
| 1. <i>Om Prakash v. Jugal Kishore</i> , 1934 A 847=18 R. D. 257; <i>Lachman v. Mohammad</i> , 1951 R. D. 229=1951 A. W. R. 214 (R). | 14. <i>Vidhya Bhusan v. Ali Hasan</i> , 1938 R. D. 944; <i>Karan Singh v. Mohan Singh</i> , 1942 R. D. 40. |
| 2. <i>Brij Chandra v. Ram Narain</i> , 1937 A 618; 14 R. D. 471; 18 R. D. 437. | 15. <i>Suraj Pal v. Ude Charan</i> 1939 R. D. 101. |
| 3. <i>Bhan Pratab Singh v. Bisan Kuar</i> , 1935 R. D. 438. But see <i>Wilayat Husain v. Wahid Shah</i> , 5 R. D. 292. | 16. <i>Deshraj v. Ghulam Chisti</i> , 5 R. D. 257; <i>Chattar Singh v. Har Kishan</i> , 5 R. D. 433. |
| 4. <i>Bhagwan Din v. Uday Narain</i> , 5 R. D. 262. | 17. <i>Sheopujan v. Sobhat</i> , 14 A. L. J. 1066. |
| 5. <i>Suraj Prasad v. Thakur</i> , 17 R. D. 611. | 18. S. D. 5 of 1921; 1922 R. C. 471. But see 4 U. D. 521. |
| 6. <i>Prabu Nath v. Sheo Mangal</i> , 17 R. D. 470; <i>Kali Bux Singh v. Nanak Prasad Dass</i> , 1938 R. D. 763. | 19. 5 R. D. 335. |
| 7. 4 R. D. 390. | 20. Boards Circular Letter No. 13 (Judl.)—384 B. dated 2-6-30; 1940 A. W. R. 163. |
| 8. <i>Seetal Bux Singh v. Gajraj Singh</i> , 5 U. D. 46; <i>Ali Ahmad v. Bano Begam</i> , 1942 R. D. 125. | 21. <i>Subedar v. Chet Ram</i> , 17 R. D. 992. But see <i>Abbas Khan v. Mohammad Ali</i> , 18 R. D. 181. |
| 9. <i>Sri Narain v. Reoti Kunwar</i> , 1941 R. D. 821; <i>Kamnal Misra v. Prabhwati</i> , 1935 R. D. 58; <i>Asharfi Lal v. Matadin</i> , 18 R. D. 135. | 22. <i>Brij Nath Singh v. Sooraj Bali Singh</i> , 18 R. D. 105; <i>Rama Prasad v. Saltanat Rai</i> , 18 R. D. 457. |
| 10. <i>Narain Dei v. Shri Thakur Rau Janki</i> , 1947 R. D. 11. | 23. <i>Balmakund Lal v. Saleha Begam</i> , 18 R. D. 434. |
| 11. <i>Baljit Singh v. Lehri Singh</i> , 1935 R. D. 459; <i>Ramji Choube v. Hazari Choube</i> , 18 R. D. 126. | 24. <i>Nur Mohammad v. Abdul Quddus</i> , 1941 R. D. 432. |
| 12. <i>Shambhu Nath v. Nanhey Mal</i> , 1938 R. D. 591. | 25. <i>Kundan Lal v. Dalpat</i> , 4 U. D. 400; <i>Ram Swarup v. Bunyad Ali</i> , 13 R. D. 255. |
| | 26. <i>Saida Din v. Masurya Din</i> , 1940 R. D. 362; <i>Bhagwati Singh v. Indrijit Singh</i> , 1941 R. D. 986. See also |

constitute *res judicata* unless the case is decided under Section 42²⁷. But where the same point is involved in a number of mutation cases between the same parties filing of appeal in one case only, the appeal would be barred by *res judicata*²⁸.

Civil Procedure Code—Application.—The provisions of the Code of Civil Procedure do not apply *en bloc* to proceedings in Courts constituted *bona fide* under the Land Revenue Act and therefore a compromise entered into by the guardian of a minor for his benefit without the leave of the Court is not bad²⁹, nor can leave to appeal to the Privy Council (Supreme Court) be given³⁰.

Deeds.—If the deceased was entered as a proprietor and not as a Mutawalli, the validity of a waqf cannot be considered in a mutation case based on succession³¹. Adoption made by a widow the mutation Court can take evidence of authority³². A mortgage deed not acted upon for nineteen years cannot be the basis of mutation³³. The names of Mutawallis, trustees etc. cannot be recorded in Khewat, but the Khewat must contain the name of the person managing the property³⁴.

41. Settlement of boundary disputes.—(1) All dispute regarding boundaries shall be decided as far as possible on the basis of existing survey maps, but if this is not possible, the boundaries shall be fixed on the basis of actual possession.

(2) If, in the course of an inquiry into a dispute under this section, the Collector is unable to satisfy himself as to which party is in possession, or if it is shown that possession has been obtained by wrongful dispossession of the lawful occupants of the property within a period of three months previous to the commencement of the inquiry, the Collector—

(a) in the first case shall ascertain by summary inquiry who is the person best entitled to the property, and shall put such person in possession;

(b) in the second case, shall put the person so dispossessed in possession; and shall then fix the boundary accordingly.

Scope.—Boundary disputes are to be decided on the existing survey maps³⁵ but if this is not possible, the boundaries are to be fixed on the basis of actual possession. There can be consideration of title only if it is not possible to decide on either of these two basis³⁶. This section is not confined to disputes between a Zamindar or tenant³⁷, it includes disputes between a Zamindar and his tenant³⁸ disputes as to removal of land from one village and inclusion in another³⁹, and cases of repairs of boundary marks⁴⁰. But the Revenue Courts have no concern with plots in Abadi⁴¹, unless it is a Kishtwar plot in the Abadi shown in Kishtwar survey⁴², nor a demarcation application be converted into a partition suit⁴³.

Survey Map.—The disputes are initially to be decided on the basis of existing survey maps i. e. maps prepared at the last settlement⁴⁴. If measurements can be made

- 1941 R. D. 536; 1941 R. D. 171;
- 1941 R. D. 566; 1941 R. D. 430;
- Ram Khelawan v. Nihar*, 1951 R. D. 239=1951 A. W. R. 190 (R).
27. *Kallo Pandey v. Lal Mohammad Khan*, 1942 R. D. 493.
28. *Guzedu v. Ajit*, 6 U. D. 98.
29. *Sital Prasad Singh v. Sarju Singh*, 1932 O 44=15 R. D. 781; *Raj Bahadur v. Mst. Jamma Kuar*, 1939 A 607=1939 R. D. 446.
30. *Jawaid Hussain v. Abdul Kasim Zaidi*, 1948 R. D. 73; *Udit v. Mubarak*, 13 R. D. 159 (P. C.); *Surendrapal Singh v. Virpal Singh*, 1951 R. D. 159=1951 A. W. R. 145 (R).
31. *Mohammad Masud v. Kaniz Fatima*, 1941 R. D. 403.
32. *Chandika Prasad Kuwari v. Balbhadra Narain Mal*, 1939 R. D. 316.
33. *Ram Lakhani v. Gonti Prasad*, 1939 R. D. 521. See also 1941 R. D.

- 537.
34. *Balkrishna Das v. Saraswati Bibi*, 18 R. D. 615.
35. *Suraj Bux Singh v. Ram Deo Kunwar*, 3 R. D. 266; *Jai Ram v. Mohammad Yusuf*, 18 R. D. 332.
36. *Dhayan Singh v. Tashim Husain*, 1945 A. W. R. 254 (Rev.)
37. *Jadunandan Singh v. Bachan Koeri*, 13 R. D. 527.
38. *Ibid.*
39. *Sheik Mohammad v. Ghulam Murtaza*, 6 R. D. 519.
40. *Mst. Rukho v. Kunwar Dakhan Lal*, 4 R. D. 333.
41. *Brij Mohan v. Anant Lal*, 1938 R. D. 537. But see 1941 R. D. 893.
42. 18 R. D. 332.
43. *Sheo Mangal Pathak v. Dharam Dei*, 1941 R. D. 740.
44. *Raghuraj Singh v. Narendra Bahadur Singh*, 2 R. D. 85; 4 R. D. 333.

on the basis of the map, it is not necessary to refer to Khasra⁴⁵, otherwise the two should be read together⁴⁶. The maps however should be altered in conformity with the decree of the Civil Court⁴⁷.

Actual possession.—This excludes the idea of formal, constructive or juridical possession as distinguished from physical possession⁴⁸.

41-A. * * * ⁴⁹.

42. * * * ⁵⁰.

43. Procedure when rent payable is disputed.—In case of any dispute regarding the [revenue or]⁵¹ rent payable by any [tenureholder,]⁵² the Collector shall not decide this dispute, but shall record as payable for the year to which the annual register refers the [revenue or]⁵¹ rent payable for the previous year, unless it has been enhanced or abated by an order or agreement under this Act,⁵³ [or the United Provinces Tenancy Act, 1939], [or the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1951].⁵⁴

Scope.—This section limits the powers of a Collector. He is prohibited from deciding the disputes regarding the rent payable by any tenant; and this rule is mandatory⁵⁵. He must record the rent payable for the previous year unless it has been enhanced or abated by an order, or agreement under this Act or the U. P. Tenancy Act. For enhancement and abatement of rent see Section 87 of this Act and Sections 114, 117 and 119 of the U. P. Tenancy Act. The "rent payable" does not include "Zaid Matalba"⁵⁶. A dispute about commutation of rent cannot be decided under this section⁵⁷, nor an application for correction of rent about which there is dispute⁵⁸.

Agreement—meaning.—In order to obtain a record of enhancement of rent an agreement or order of the court has to be proved, the mere fact that more rent was paid for a number of years is not sufficient⁵⁹. According to Section 89, U. P. Tenancy Act, the agreement to enhance or abate the rent must be by a registered instrument. Under this section an oral agreement accompanied by payment at enhanced rate is admissible⁶⁰. A rent which is illegally enhanced cannot be recognised⁶¹. An entry of enhanced rent in Khitauni with the signatures of tenant, landlord and the Kanungo is not sufficient to prove agreement⁶².

[44. Presumption as to entries in the annual register.—All entries in the annual register shall, until contrary is proved, be presumed to be true.]⁶³

Khewat—Presumption.—Under this section there is a presumption that the person whose name is entered in Khewat continued in possession of the property⁶⁴. Where there is no evidence that the entries are wrong, the court may presume them to be correct⁶⁵, but they cannot be conclusive evidence⁶⁶, they may be regarded as a

45. *Sheo Balak Singh v. Special Manager Court of Wards Ajodhia*, 1939 R. D. 14.

46. *Sheikh Mohammad v. Ghulam Murtaza*, 6 R. D. 510.

47. *Mohan Lal v. Ratan Sen*, 1935 R. D. 292; 2 R. D. 85.

48. *Ranjog Singh v. Bhola Nath*, 1935 R. D. 280.

49. S 41-A add. by S. 2 U. P. Act XXI of 1948, del. by S. 339 (c), Sch. III, list II, Sl. 17 of U. P. Act I of 1951.

50. S. 42 del. by Sl. 11, *ibid*

51. Ins. by Sl. 43 (a), *ibid*.

52. Subs. by Sl. 43 (b) *ibid* for [tenant].

53. Subs. for "or the Agra Tenancy Act, 1926, or the Oudh Rent Act, 1886, as the case may be" by S. 13 of U. P. Act XI of 1941, made by the Governor in exercise of the powers assumed by him under S. 93 of G. of I. Act, 1935.

54. Add. by S. 339 (c), Sch. III, list II, Sl. 19 (c) of U. P. Act I of 1951.

55. *Ganpat Rai v. Dulle*, 1938 R. D. 484; 16 R. D. 209.

56. *Lal Chander Mool Singh v. Gaya Pershad*, 12 R. D. 631.

57. *Abdul Rehman v. Ata Husain*, 7 R. D. 477.

58. *Ganpat Rai v. Dulle*, 1938 R. D. 484.

59. 3 R. D. 94; 18 R. D. 168; 12 R. D. 123.

60. *Mazhar Husain v. Ram Nath*, 4 R. D. 534. But *Hardwar v. Suraj Bhan*, S. D. 6 of 1919 and 18 R. D. 209.

61. 16 R. D. 209.

62. 9 R. D. 45.

63. Subs. by Sl. 20, *ibid*.

64. *Beni Prasad v. Gauhar Ali*, 1945 R. D. 519=1945 A 347; *M. Abul Hasan Khan v. Prag*, 15 A. L. J. 113 (P. C.).

65. *Hansraj Kunwar v. Suraj Baksh*, 18 R. D. 66; *Mohd. Hanif v. Gobardan Dass*, 15 R. D. 180=1931 O 316; *Mohd. Taqi v. Ewar Mohd*, 1941 R. D. 802; *Ragho v. Ibrahim*, 1936 R. D. 335; *C. J. Singh v. Sita Ram Lal*, 1938 R. D. 702.

66. *Kamta Prasad v. Chatarpal*, 1940 R. D. 101=1940 O 283.

piece of evidence⁶⁷. An entry cannot also determine the legal status and is of no consequence on the question of title⁶⁸, nor can assist materially in determining a question whether members of a certain family are joint or separate⁶⁹, even if they are shown as co-sharers of specified shares⁷⁰.

Khitauni—Presumption.—Entries that have come into existence consequent upon a decree are admissible under Section 35, Evidence Act⁷¹, but entries under this Act are intended to be based upon facts as to possession, and when it is plain that the party was not in possession, on their merits as evidence, these entries add nothing⁷². They do not carry any presumption of accuracy, and can be rejected against the weight of other evidence⁷³. The entry in Khitauni can at best be evidence under the section leading to the presumption that the state of affairs recorded therein at the time when it was recorded was correct⁷⁴.

Presumptions.—The presumption is regarding the truth of entries in annual registers until the contrary is proved⁷⁵. In other words, the presumption is rebuttable⁷⁶. The quantum and nature of evidence would depend upon the circumstances of each case⁷⁷. No presumption would arise in cases where the entry is ambiguous⁷⁸. Evidence of correctness of entries may also be adduced⁷⁹.

Decisions—Effect.—This section lays down that all decisions under Sections 40, 41 and 42 shall be binding on Revenue Courts⁸⁰. It is of little consequence if the decisions are based on award⁸¹, admission⁸² or compromise⁸³. But an *ex parte* order would not be binding⁸⁴; nor an order on the withdrawal of an application, as it would no amount to decision⁸⁵.

Civil Court.—A person has been given a right to claim and establish in the Civil Court any interest in land which requires to be recorded in the registers prescribed by clauses (a) to (d) of Section 32. This right is subject to the provisions of Section 233 which lays down the classes of cases where no person shall institute any suit or other proceedings in a Civil Court. In cases which are exclusively triable by Revenue Courts no civil suit would lie *e. g.*, see cases at footnote 86.

45. [* * *]⁸⁷.

46. Obligation to furnish information necessary for the preparation of records.—Any person whose rights, interests, or liabilities are required by any enactment for the time being in force or by any rule made under any such enactment, to be entered in any official register by a kanungo or patwari, shall be bound to furnish, on the requisition of the kanungo or patwari or of any revenue officer engaged

67. *Raja Ram v. Beni Madho*, 1949 R. D. 22.

68. *Ganesh Bux Singh v. Ajodhia Bux Singh*, 7 Lucknow 564=9 O. W. N. 304.

69. *Acharya Har Mitra v. Acharya Bachan Man*, 13 R. D. 74; *Jat Singh v. Jangu Singh*, 17 R. D. 943; *Jangu Singh v. Jot Singh*, 18 R. D. 68=1936 O. W. N. 582.

70. *Sri Ram Singh v. Suraj Pal Singh*, 1930 R. D. 419 (Sup.)

71. *Kesho Prasad Singh v. Bahuria*, 1937 R. D. 178=1937 P. C. 69.

72. *Kesho Prasad Singh Bahadur v. Bahuria*, 1937 R. D. 173=1937 P. C. 69.

73. *Nihal Singh v. Bhola*, 1948 R. D. 154.

74. *Kuldip Lal v. Ram Birich Tewari*, 1953 Pat. 267.

75. *Hansraj v. Suraj Baksh*, 18 R. D. 66; *Ishad Husain v. Mukat Manohar Lal*, 11 R. D. 682.

76. 16 R. D. 171.

77. 1930 R. D. 449 (Sup.)

78. *Jaigovind Pande v. Ramnandan Sahai*, 12 R. D. 537 (P. C.).

79. *Ganesh Baksh Singh v. Ajodhia Baksh Singh*, 9 O. W. N. 304.

80. *Hirde v. M. Abdul Husain Khan*, 26 A. L. J. 335; *Ram Sri v. Sri Kishen*, 46 A 879.

81. *Dalip Singh v. Man Kuar*, 6 R. D. 304; *Girdhari v. Ram Baran*, 14 A. L. J. 85.

82. *Ram Ratan v. Binda*, 5 R. D. 195.

83. *Chokhey Singh v. Jote Singh* 37 A 73.

84. *Bismillah Bibi v. Sher Ali Khan*, 17 R. D. 1004.

85. *Bahiro Lohar v. Abdul Wahad*, 16 R. D. 120.

86. *Purneshwar Dat v. Raja Mohd. Abul Hasan Khan*, 1911 R. D. 233 (Sup); *Raja Mohd. Abul Hasan Khan v. Ram Pargash*, 20 O. C. 8 (P. C.); *Ram Asre v. Abul Hasan Khan*, 2 O. L. J. 241; *Prag v. Raja Abul Hasan Khan*, 10 O. L. J. 344; *Maula Bux v. Lebi Prasad*, 17 R. D. 431; *Sheombar Singh v. Sheombar Singh*, 11 R. D. 431; *Bechu Sahai v. Nand Ram Das*, 1914 R. D. 125 (Sup); *Chah Narain Singh Rao v. Sri Krishna Din*, 12 O. C. 164; *Jagannath v. Bikarmajit Singh*, 13 R. D. 22; *Narain Singh v. Govind Ram*, 1911 R. D. 170 (Sup); *Thakur Dei v. Parbhu*, 5 R. D. 44; *Babbu v. Sheo Ratan Lal*, 5 R. D. 89.

87. *Omit*, by Sl. 21, *ibid*.

in compiling the register, all information necessary for the correct compilation thereof.

Scope.—This section creates an obligation on all persons whose rights, interests or liabilities are required to be entered in any official register, on requisition by Kanungo or Patwari or of any revenue officer to give all information necessary for compilation of any official registers to be maintained under any enactment or rule. It enables the Patwari to collect information about collection of rents⁸⁸. Person may include a Ziladar collecting rent from tenants⁸⁹, but not an agent of the Zamindar⁹⁰.

Punishment.—If on requisition the information as required by the section is not given, any person guilty of it shall be liable to prosecution under Section 176 or 177 I. P. C. To secure conviction it must be proved that there was requisition⁹¹ and the information was refused⁹². A sentence of imprisonment is however not a proper sentence to pass⁹³.

47. Inspection of records.—All maps, field-books and registers kept under this Act shall be open to public inspection at such hours and on such conditions as to fees or otherwise as the [State Government]⁹⁴ may prescribe.

CHAPTER IV

Revision of Maps and Records

48. Notification of record operations.—If the [State Government]⁹⁴ thinks that, in any district or other local area a general or partial revision of the records or a re-survey, or both, should be made, it shall publish a notification to that effect ;

Effect to notification.—And every such local area shall be held to be under record or survey operations, or both, as the case may be, from the date of the notification until the issue of another notification declaring the operations to be closed therein.

Scope.—To put any local area under record or survey operations a notification is necessary. If no notification is made the appointments of Assistant Record Officer would be void, and he would have no authority to exercise any powers under this chapter⁹⁵. Entries made under this chapter are presumed to be correct⁹⁶.

49. Record Officers.—The [State Government]⁹⁷ may appoint an officer, hereinafter called the Record Officer, to be in charge of the record operations or the survey, or both as, the case may be, in any local area and as many Assistant Record Officers as to it may seem fit, and such officers shall exercise all the powers conferred on them by this Act so long as such local area is under record or survey operations, as the case may be.

50. Powers of Record Officer as to erection of boundary marks.—When any local area is under survey operations the Record Officer may issue a proclamation directing all [Gaon Sabhas, Bhumidhars and Sirdars],⁹⁸ to erect, within fifteen days, such boundary marks as he may think necessary to define the limits of [the villages and fields ;]⁹⁹ and, in default of their compliance within the time specified in the proclamation, he may cause such boundary marks to be erected, and the

88. *K. E. v. Suraj Baksh Singh* 10 O. C. 238.

89. 1941 O. A. 656.

90. *K. E. v. Suraj Baksh Singh* 10 O. C. 238.

91. *Budh Singh v. K. E.*, 1927 A 111.

92. *K. E. v. Janki Singh*, 8 O. C. 1284.

93. *Ibid.*

94. Subs. by the A. O. 1950 for (Provl. Govt.) which had been subs. by the A. O. 1937 for (L. G.).

95. *Sukurwa v. Nazir Ahmad*, 9 R. D. 459.

96. 1948 R. D. 356.

97. Subs. by the A. O. 1950 for (Provl. Govt.) which had been subs. by the A. O. 1937 for (L. G.).

98. Subs. by S. 339 (c), Sch. III, list II, Sl. 22 (a) of U. P. Act I of 1951 for [Owners of villages, mahals and fields].

99. Subs. by Sl. 22 (b) *ibid* for [their villages, mahals or fields.]

Collector shall recover the cost of their erection from the [Gaon Sabha, Bhumidhars or Sirdars concerned].¹

* * * 2

Proclamation.—For mode of proclamation see Sections 197 and 198.

Costs-Recovery.—The costs shall be recovered as arrears of land revenue (*vide* Sections 208; 188 and 146).

51. Decision of disputes.—In case of any dispute concerning any boundaries, the Record Officer shall decide such dispute in the manner prescribed in Section 41.

52. Records to be prepared in re-survey.—When any local area is under survey operations the Record Officer shall prepare for each village therein a map and field-book, which shall thereafter be maintained by the Collector as provided by Section 28, instead of the map and field-book previously existing.

[53. Preparation of new record-of-rights.—Where any local area is under record operation the Record Officer shall frame for each village therein the record specified in Section 32 and the record so framed shall thereafter be maintained by the Collector instead of the record previously maintained under Section 33].³

Decision—Effect.—The decision of a Record Officer in a dispute about tenancy rights is not *resjudicata*, and is no bar to a declaratory suit⁴.

54. Attestation of entries and decision of disputes.—All undisputed entries in the record-of-rights shall be attested by the parties interested, and all disputes regarding such entries, whether taken up by the Record Officer of his own motion or upon application by, any party interested, shall be disposed of by him in accordance with the provisions of Sections 40, 41, []⁵ and 43.

Scope.—The powers of the Land Records Officer are limited to those matters which relate to the maintenance and correction of records. He cannot decide other extraneous matters⁶. If superior proprietor is not shown to be interested in purkhtadari rights, his knowledge to entries about them cannot be presumed⁷.

Attestation.—All undisputed entries shall be attested by the parties interested. This is imperative and mandatory. Unless they are attested no presumption of truth attaches to them (*vide* Para 7 Manual for the Revision of Maps and Records). Where a Kanungo receives information in course of *partial*, this information would not amount to attestation⁸.

Disputes.—All disputed entries shall be decided in accordance with the provisions of Sections 40, 41, 42 and 43. However, no application which could not be entertained under Chapter III shall be maintainable⁹, nor entries fifty years old, which have stood the test of one settlement and one partition can be changed¹⁰.

Decisions.—The Land Record Officer shall follow the procedure laid down in Sections 40 to 43; which if not followed would make the proceeding liable to be dismissed.¹¹ A decision under Section 57 would operate as *res judicata*¹².

55. Particulars to be stated in the list of cultivators.—[The register of persons cultivating or otherwise occupying land specified in Section 32 shall specify as to each tenure-holder the following particulars.

1. Subs. for [owners] by Sl. 22 (c) *ibid*
2. Explanation *d-l* by Sl. 22 (d) *ibid*.
3. Subs. by Sl. 23, *ibid* for the original section.
4. *Dambar v. Nathu Lal*, 1941 R. D. 430=1941 O. A. 442 (up.)
5. The figure (42) *del*, by S. 339 (c), Sch. III. list II, Sl. 24 of U. P. Act I of 1195.
6. *Bhagauti Prasad v. Chandika Prasad*, 1941 R. D. 566=1941 A 339.
7. *Bhairo Singh v. Ambika Baksh Singh*, 1942 O 374.

8. *Hukun Chand v. Balwant Singh*, 7 R. D. 408.
9. *Lachman Prasad v. Farrukh Begam*, 7 R. D. 417.
10. *Pearey Lal v. Hoti Lal*, 1941 R. D. 829.
11. 7 R. D. 523.
12. *Narsing v. Budri*, 1941 R. D. 1092; 5 R. D. 311. But see *Pratab Singh v. Balwant Singh*, 1941 R. D. 171; *Dambar v. Nathu Lal*, 1941 R. D. 400; *W. Philips v. S. Philips*, 1941 R. D. 536.

- (a) the class of tenure as determined by the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1951.
- (b) the revenue or rent payable by the tenure-holder, and
- (c) any other conditions of tenure which the [State Government]¹³ may by rules made under Section 234 require to be recorded.

Explanation.—For the purposes of this section the year for which the register is prepared shall be reckoned as a complete year.¹⁴

Land-Meaning.—It has not been defined in this Act. It does not necessarily mean land let or held for agricultural purposes. It includes groves¹⁵, compound of a bungalow¹⁶, and land held in lieu of Guzara¹⁷.

Section 32 (e).—The register to be maintained under this clause is Khitauni. Proprietary rights are not entered therein¹⁸. The entries in this register shall be presumed to be correct under Section 57¹⁹. The object and the nature or purpose of preparing the Khitauni have been explained in Board's Circular No. 1 of 1860 dated 2nd January, 1863²⁰.

Tenure-Meaning.—The register is to mention the nature and class of the tenure. "Class" would mean the kind of tenancy as defined by Section 21, U. P. Tenancy Act, while nature would refer to the conditions or the terms under which a tenant is holding the land²¹.

Rent Payable.—Means the rent payable on the date of the entry²², for any land in his occupation²³. In case of dispute rent payable for the previous year would be entered²⁴, unless there has been enhancement or abatement by agreement or order of court. The rent entered in Jamabandi and attested must be deemed to be by agreement.²⁵ The entries respecting rent are not conclusive²⁶; they can be rebutted²⁷, but unless rebutted they are binding²⁸. Fard-i-lagan cannot be judicially recognised unless approved and accepted by the tenants interested²⁹. An order regarding entry of rent is executive and not judicial and therefore not *res judicata*³⁰, nor attestation operates as estoppel³¹.

Year-Meaning.—The "year" used in the explanation means a fasli and not a calendar year³². The fasli year begins on 1st July and ends on 30th June.³³

56. * * *34.

57. Presumption as to entries.—All entries in the record of rights prepared in accordance with the provisions of this Chapter shall be presumed to be true until the contrary is proved; and all decisions under this Chapter in cases of dispute shall, subject to the provisions of sub-section (3) of Section 40, be binding on all Revenue Courts in respect of the subject-matter of such disputes; but no such entry or decision shall affect the right of any person to claim and establish in the

13. *Subs.* by A. O. 1950 for [Prov. Govt.]
14. *Subs.* by S. 333 (c), Sch. III, list II, Sl. 25 of Act I of 1951.
15. *Jagannath v. Hanwant*, 2 U.D. 592= 3 R. D. 480; *Baldeo Saithwar v. Bindeshwari Prasad*, 10 R. D. 584.
16. *Laik Ram v. Mahendra Man Singh*, 4 U. D. 111.
17. 1937 R. D. 595.
18. *Udit Narain v. Mubarak Ali*, 13 R. D. 489.
19. *Bisheshwar Dayal v. Basirat*, 12 R. D. 270.
20. 12 R. D. 819.
21. *Kashi Prasad v. Ambika Prasad*, 14 R. D. 450.
22. *Ahmadi Begam v. Bhan Singh*, 12 R. D. 241= 1928 A 365.
23. *Lotai v. Nisar Ahmad Khan*, 2 R. D. 491.
24. *Hardwari v. Surajbhan*, S. D. 6 of 1919; *Sajjad v. Ghosti*, 2 U. D. 192.
25. *Jang Bahadur Singh v. Sat Narain Singh*, 12 R. D. 819. But see *Sarajjit Singh v. Special Manager*, 3 O. L. J. 468.
26. *Gangabai v. Faqirgowda*, 1940 P.C. 93.
27. *Durga v. Ram Padarath*, 8 O. L. J. 495; *Chintamani v. Sri Ram*, 149 I.C. 805.
28. *Sudarshan Dayal v. Pirthi Singh*, 13 R. D. 152; 12 R. D. 819; 10 R. D. 634.
29. *Lotai v. Nisar Ahmad Khan*, 2 R. D. 491.
30. *Hamidunnissa v. Abdul Hamid*, 1 A. L. J. 9.
31. *Abdul Huda v. Baba Din*, 11 R. D. 128.
32. *Subhadra Kuar v. Gaya Prasad* 1 R. D. 506.
33. *Abu Jafar v. Senjhari*, 5 R. D. 237; *Sri Dutt Shukla v. Changan*, 16 R. D. 399.
34. *Del.* by Sl. 26, *ibid.*

Civil Court any interest in land which requires to be recorded in the registers prescribed by * * *³⁵ Section 32.

Presumption.—All entries in the record-of-rights *i. e.* registers prepared under clauses (a) to (e) of Section 32, shall be presumed to be correct unless the contrary is proved³⁷. It is only very strong evidence that can be accepted in rebuttal of settlement entries³⁸. This presumption under Section 57 cannot be availed of in case of entries prior to 1901, although the general presumption under Section 114, Evidence Act, can be invoked³⁹. Where a settlement entry has been found to be incorrect it cannot be relied upon⁴⁰. But it cannot be said that these entries are conclusive⁴¹, and the court can ignore it if no basis for the entry is made available⁴². Where settlement entry is inconsistent with previous entry, the presumption is that the settlement entry is correct⁴³. Entries in subsequent settlements should be preferred to those of the previous settlements⁴⁴. In a suit for arrears of rent, the plaintiff tried to prove agreement contrary to entries, but his evidence having been disbelieved, the presumption under this section still remained⁴⁵.

Decisions.—To be binding must be given in disputed cases⁴⁶.

Entries Binding.—The entry of Maurusi has no force to indicate a right of occupancy⁴⁷. The entry with respect to grove cannot be challenged⁴⁸. Entries with respect to the terms of mortgage under a compromise would be evidence of mortgage⁴⁹.

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CHAPTER IX

Procedure of Revenue Courts and Revenue Officers

189. Place for holding Court.—A Commissioner may hold his Court at any place within his division.

An Additional Commissioner may hold his Court at any place within the division or divisions to which he is appointed.

A Collector [Additional Collector]⁵⁰, an Assistant Collector (whether in charge or not of a sub-division of a district), a Record Officer, an Assistant Record Officer, a Settlement Officer or an Assistant Settlement Officer, may hold his Court at any place within the district to which he is appointed.

A Tahsildar may hold his Court at any place within his tahsil.

Scope.—This section empowers all the officers mentioned in this section to hold their Courts at any place within their territorial jurisdiction. If the case is fixed in camp, it should not be heard *ex parte*⁵¹.

190. Power to enter upon and survey land.—The Collector,

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| 35. The words [clauses (a) to (b) of] <i>del.</i> by S. 339 (c), Sch. III, list II, Sl. 27 of U. P. Act I of 1951. | 219; <i>Tika Ram v. Goyadin</i> 4 R. D. 138. |
| 36. Ss. 58 to 188, <i>i.e.</i> Chapters V to VIII <i>del.</i> by Sl 28, <i>ibid.</i> | 44. <i>Changur Chand v. Jang Bahadur Chand</i> , 1950 R. D. 31. |
| 37. <i>Nem Singh v. Ishwari</i> , 1949 R. D. 59; <i>Ram Achraj Pandey v. Algu Kahwar</i> , 1949 R. D. 244; <i>Raj Kali v. Ram Sunder</i> 1949 R. D. 263; 1948 R. D. 56. | 45. <i>Udai Pratab Singh v. Mst. Rukmin</i> , 1952 R. D. 128=1952 A. L. J. 110=1951 A. W. R. 514 (H. C.) |
| 38. <i>Wahiduddin v. Krima Bibi</i> , 1947 R. D. 191; <i>Raja Ram v. Kantach</i> , 1949 R. D. 34; <i>Anar Devi v. Inder Dutt</i> , 1951 R. D. 52=1951 A. W. R. 74 (R). | 46. <i>Balraji v. Pragash</i> , 6 R. D. 64; <i>Sadhari Kuar v. Deokinandan</i> , 4 R. D. 496; <i>Cheda Singh v. Bhajan</i> , 4 U. D. 674; <i>Sropat Sahai v. Ram Autar</i> , 8 R. D. 63. |
| 39. <i>Yar Mohammad Khan v. Mohd. Ismail</i> , 1949 R. D. 260; 1947 A. W. R. 4 (R). | 47. <i>Hon. Raja Pratab Bahadur Singh v. Ranjit Singh</i> , 11 U. D. 132. |
| 40. <i>Kashar v. Ram Lal</i> , 1949 R. D. 407. | 48. <i>Baldeo v. Bindeshwari</i> , 1926 A 639. |
| 41. <i>Dalganjan v. Suraj Deo Misir</i> , 1948 R. D. 166. | 49. <i>Balak Dasumdi v. D. C. Faizabad</i> , 6 U. D. 290. |
| 42. <i>Syed Ahmed v. Yakil Ahmed</i> , 1947 A. W. R. 147 (Rev.) | 50. <i>Add.</i> by S. 16 of U. P. Act II of 1932. |
| 43. <i>Taluqdar v. Hashmat</i> , 1942 R. D. | 51. <i>Mohammad Husain v. Umrao</i> , S. D. 9 of 1893, <i>Sheo Naresh Pandey v. Babu Lal</i> , 7 R. D. 503. See <i>Asa Ram v. Tula Ram</i> , 12 R. D. 647. |

Settlement Officer, Record Officer, and their assistants, subordinates, servants, agents and workmen may enter upon the survey land, and demarcate boundaries and do all acts necessary for any purpose connected with their duties, under this or any other Act.

⁵²[**191. Power of State Government, Board or Commissioner to transfer cases.**—The [State Government]⁵³ or a Commissioner may transfer any non-judicial case or any class of non-judicial cases not connected with settlement, and the Board or a Commissioner may transfer any judicial or settlement case or any class of such cases, including partition cases, from any subordinate Revenue Court or Revenue Officer to any other such court or officer competent to deal therewith.]

Judicial.—The dismissal of a lambardar is a judicial matter⁵⁴.

192. Power to transfer cases to and from subordinates.—The Collector, an Assistant Collector in charge of a sub-division of a district, a Tahsildar, a Record Officer, or a Settlement Officer may make over any case or class of cases, arising under the provisions of this Act or otherwise, for inquiry or decision, from his own file to any of his subordinates competent to deal with such case or class of cases;

or may withdraw any case or class of cases from any Revenue Officer subordinate to him, and may deal with such case or class of cases himself or refer the same for disposal to any other such Revenue Officer competent to deal therewith.

Scope.—See *Saithuri v. Neehar*⁵⁵.

⁵⁶[**192-A. Consolidation of cases.**—Where more cases than one involving substantially the same question for determination and based on the same cause of action are pending in one or more courts they shall, on application being made by any party to the court to which the court or courts concerned are all subordinate, be consolidated in one court and decided by a single judgment. Such cases may be filed direct in the superior court.]

Appeal.—If several mutation applications consolidated and decided by one judgment, there should be as many appeals as there are applications⁵⁷.

193. Power to summon persons to give evidence and produce documents.—Any revenue court may summon any person whose attendance it considers necessary for the purpose of any investigation, suit or other business before it.

All persons so summoned shall be bound to attend, either in person or by an authorized agent, as such court may direct, and to state the truth upon any subject respecting which they are examined or make statements,

and to produce such documents and other things as may be required:

Provided that persons exempt from personal attendance in the Civil Court under [Sections 132 and 133 of the Code of Civil Procedure, 1908]⁵⁸ shall, subject to the provisions of those sections, be exempt from personal attendance under this section.

52. S. 191 subs. by S. 2 & Sch. of U. P. Act XII of 1922.

53. Subs. by the A. O. 1950 for (Prov. Govt.) which had been subs. by the A. O. 1937 for (L. G.)

54. *Narain Rao Ch. v. Ram Chandraji Maharaj*, 1942 R. D. 896.

55. 1940 A. W. R. 168.

56. S. 192-A added by S. 9 of U. P. Act II of 1932.

57. *Chandika Prasad Kunwari v. B. N. Mal*, 1939 R. D. 316.

58. Subs. for "Ss. 640 and 641 of the Code of Civil Procedure" by S. 47 of U. P. Act XI of 1941, made by the Governor in exercise of the powers assumed by him under S. 93 of G. of I. Act, 1935, as re-enacted by U. P. Act XIII of 1948.

194. Procedure in case of non-compliance with summons.—If any person, or whom a summons to give evidence or produce a document has been served, fails to comply with the summons, the officer by whom the summons has been issued may exercise the powers conferred on Civil Courts by [Order XVI, rules 10 to 13, 17 and 18 of the Code of Civil Procedure, 1908]⁵⁹.

195. Summons to be in writing, signed and sealed.—Every summons shall be in writing in duplicate, and shall be signed and sealed by the officer issuing it, or by such person as he empowers in this behalf.

Mode of serving summons. Service in district other than that issue.—And shall be served by tendering or delivering a copy of it to the person summoned, or, if he cannot be found, by affixing a copy of it to some conspicuous part of the usual residence and if such person resides in another district, the summons may be sent by post to the Collector of that district for service.

196. Mode of serving notice.—Every notice under this Act may be served either by tendering delivering, or sending a copy thereof by post, in a cover registered under the Indian Post Offices Act, 1898, to the person on whom it is to be served; or if such person is a proprietor of land, to his agent;

or by affixing a copy thereof at some place of public resort on or adjacent to the land to which such notice refers.

Affixation.—If notice affixed without giving reasons for the affixation it is no service⁶⁰.

197. Mode of issuing proclamations.—Whenever a proclamation is issued under this Act copies thereof shall be posted in the Court-house of the officer issuing it, at the headquarters of the tahsil within which the land to which it refers is situated, and at some place of public resort on or adjacent to the land to which it refers; and if the officer issuing it so directs, the proclamation shall be further published by beat of drum on or near the land to which it refers.

Proclamation, invalid—Effect.—In case the provisions of the section have not been complied with, and Rule 376 of the Land Revenue Manual has been ignored, the order passed in the proceedings would be a nullity⁶¹.

198. Notice and proclamation not void for error.—No notice or proclamation shall be deemed void on account of any error in the name of designation of any person or in the description of any land referred to therein, unless such error has produced substantial injustice.

199. Procedure for procuring attendance of witnesses.—If in any proceeding of a judicial nature pending before any Revenue Court, either party desires the attendance of witnesses, he shall follow the procedure prescribed by the [Order XVI, rules 2 to 4 of the Code of Civil Procedure, 1908].⁶²

⁶³[**200. Hearing in absence of party.**—Whenever any party

59. Subs. for "S. 174 of the Code of Civil Procedure" by S. 48 of *ibid*.

60. *Mohammad Hasan v. Dabir Ali*, 3 R. D. 22; *Sarju Prasad v. Ram Dayal*, 12 R. D. 229.

61. *Onkar Sahai v. Chandra Sen*, 1952 R. D. 159; *Khairunnissa v. Tajuddin Haider, Syed*, 1952 A. L. J. 77 (R)= 1952 A. W. R. 107 (R)=1952 R. D. 121.

62. Subs. for "Code of Civil Procedure, Ss. 160, 161 and 162" by S. 19 of U. P. Act XI of 1941, made by the Governor in exercise of the powers assumed by him under S. 93 of G. of I. Act, 1935. It was re-enacted by U. P. Act XIII of 1948.

63. Subs. by S. 10 of U. P. Act II of 1932.

to such proceeding neglects to attend on the day specified in the summons or on any day to which the case may have been postponed, the court may dismiss the case for default or may hear and determine it *ex parte*.]

Scope.—It applies both to plaintiff and the defendant⁶⁴, and governs suits as well as appeals⁶⁵.

Default-Meaning.—The words "On the day specified in the summons" mean the day fixed for the original hearing of the case. If a party appears on the first day but does not appear on the adjourned hearing the decision would be neither *ex parte* nor in default but on merits⁶⁶. A court is not justified in dismissing a suit for default in which evidence has been recorded⁶⁷.

201. No appeal from orders passed *ex parte* or by default.

No appeal shall lie from an order passed under Section 200 *ex parte* or by default.

Re-hearing on proof of good cause for non-appearance.—But in all such cases, if the party against whom judgment has been given appears either in person or by agent (if a plaintiff, within fifteen days from the date of such order, and if a defendant, within fifteen days after such order has been communicated to him, or after any process for enforcing the judgment has been executed or at any earlier period), and shows good cause for his non-appearance, and satisfies the officer making the order that there has been a failure of justice, such officer may, upon such terms as to costs or otherwise as he thinks proper, revive the case and alter or rescind the order according to the justice of the case :

Order not to be altered without summons to adverse party.—Provided that no such order shall be reversed or altered without previously summoning the party in whose favour judgment has been given to appear and be heard in support of it.

Scope.—This section does not apply to decisions under Section 111 of the Act⁶⁸. The limitation provided by this section is not affected by the Indian Limitation Act⁶⁹. The section merely lays down that no appeal shall lie from an order passed *ex parte* or by default, but an order refusing to review a case under Section 201 (2) is appealable by virtue of Section 210⁷⁰. The Board can restore a case dismissed for default of both parties⁷¹.

202. Correction of error or omission.—Any Court or officer by whom an order has been passed in any proceeding under this Act may, within ninety days of such order, either of his own motion or on the application of a party, correct any error or omission, not affecting a material part of the case, after such notice to the parties as may be necessary.

203. Power to refer disputes to arbitration.—The Board, a Commissioner, [an Additional Commissioner],⁷² a Collector [Additional Collector],⁷³ an Assistant Collector of the first class, a Record Officer, or an Assistant Record Officer, a Settlement Officer or an Assistant Settlement Officer, may, with the consent of the parties, by order refer any dispute before it, or him, to arbitration.

64. *Ram Narain v. Swarup Narain*, 5 R. D.

337.

65. *Mula Singh v. Ganga Sahai*, 5 R. D.

72.

66. *Uma Shankar v. Har Saran*, 3 R. D. 222; *Champa v. Ramjidas*, 5 R. D. 280; *Chandrika Prasad v. Balwant Singh*, 6 R. D. 188; *Ram Narain v. Swarup Narain*, 5 R. D. 337; *Lal Chand v. Ganga Prasad*, 12 R. D. 531.

67. *Gajodhar v. Ali Baksh*, 8 R. D. 272.

68. *Tulsi Prasad v. Matru Mal*, 18 A 210;

Sidh Gopal v. Chandra Kishore, 1938 R. D. 11.

69. *Hari Shankar v. Ram Charan*, 1942 R. D. 32.

70. *Mohammad Hasan v. Dabir Ali*, 3 R. D. 224; *Kurey Singh v. Debi Dayal*, 18 R. D. 423.

71. *Jwala Sahai v. Gajodhar Prasad*, 13 R. D. 366.

72. Add. by S. 17 of U. P. Act II of 1932.

73. Add. by S. 16 of *ibid*,

Scope.—A Tahsildar cannot refer⁷⁴. Matters remitted by the Appellate Court cannot be referred⁷⁵.

204. Procedure in cases referred to arbitration.—In all cases of reference to arbitration under Section 203, the provisions of [the Arbitration Act, 1940],⁷⁶ shall apply so far as they are not inconsistent with anything in this Act.

205. Application to set aside award.—Any application to set aside an award shall be made within ten days after the day appointed for hearing the award.

206. Decision according to award.—If the officer making the reference does not see cause to remit the award or any of the matters referred to arbitration for reconsideration, and if no application has been made to set aside the award, or if he has refused such application, he shall decide in accordance with the award, or if the award has been submitted to him in the form of a special case, according to his own opinion in such case.

207. Bar to appeal and suit in Civil Court.—Such decision shall be at once carried out, and shall not be open to appeal unless the decision is in excess of, or not in accordance with, the award or unless the decision is impugned on the ground that there is no valid award in law, or in fact;

and no person shall institute any suit in the Civil Court for the purpose of setting it aside or against the arbitrators on account of their award.

Scope.—The powers of the Revenue Court to make a reference are limited by Section 203 to the dispute before it. Thus where reference is not confined to mutation disputes, the award does not operate as *res judicata* in Civil Court⁷⁷.

Person-Meaning.—The word person used in this section can have no reference to a person not a party to the case before the Revenue Court⁷⁸.

208. Recovery of fines and costs.—All fees, fines, costs, other than costs between party and party, and other moneys ordered to be paid under this Act shall be recoverable as if they were an arrear of revenue.

A Revenue Court shall have power, subject to any special provisions in this Act, to give an apportion costs due under this Act in any proceedings before it in such manner as it thinks fit:

Provided that when land is sold under this section for moneys not payable to [the Government],⁷⁹ the provisions of Section 161 shall not apply to such sale.

209. Delivery of possession of immovable property.—When⁸⁰ [an order is made that a person be put in possession of any immovable property], the officer making the order may deliver over

74. *Mathura Prasad v. Ganga Ram*, 7 A. L. J. 69; *Satohan Pande v. Ram Ugrah Pande*, 2 R. D. 139.

75. *Nand Ram v. Fakir Chand*, 7 A 523.

76. Subs. for "Ss. 507 to 521 of the Code of Civil Procedure" by S. 50, U. P. Act XI of 1941, made by the Governor in exercise of the powers assumed by him under S. 93 of G. of I. Act, 1935, as continued by U. P. Act XIII of 1948.

77. *Bhaiya Girja Datt Singh v. Bhaiya Gangotri Singh*, 1942 R. D. 63; *Tulsi Ram v. Govind Singh*, 1939 R. D.

292.

78. *Madhura Nand v. Suresha Nand*, 1953 A. 547=1953 A. L. J. 246=1953 A. W. R. 379.

79. Subs. by the A. O. 1950 for (the Crown) which had been subs. by the A. O. 1937 for (Govt.)

80. Subs. for "possession of immovable property is adjudged" by S. 51 of U. P. Act XI of 1941 made by the Governor in exercise of the powers assumed by him under S. 93 of G. of I. Act, 1935 as continued by U. P. Act XIII of 1948.

possession in the same manner, and with the same powers in regard to all contempts, resistance, and the like, as may be lawfully exercised by the Civil Courts, in execution of their own decrees.

CHAPTER X

Appeals, Reference and Revision

210. Courts to which appeals lie.—⁸¹[(1) Appeals shall lie under this Act as follows :

(a) to the Record Officer from orders passed by any Assistant Record Officer ;

⁸²[(b) (i) to the Commissioner from orders passed by a Collector or an Assistant Collector first class or Assistant Collector incharge of sub-division.

(ii) to the Collector from orders passed by an Assistant Collector second class or Tahsildar.

⁸³[(c)] * * *]

(2) * * * ⁸⁴.

(3) * * * ⁸⁴.

⁸⁵[(4)] * * *

(5) * * * ⁸⁴.

Scope.—An order of dismissal of Lambardar is appealable.⁸⁶

211. First appeals.—Unless an order is expressly made final by this Act, an appeal shall lie to the court authorized under Section 210 to hear the same from every original order passed in any proceedings held under the provisions of this Act.

212. * * * ⁸⁷.

213. [Deleted by Sch. of U. P. Act XX of 1924.]

214. (1) ⁸⁸.

(2) No appeal * * * ⁸⁹ to [Record Officer or] ⁹⁰ the Commissioner shall be brought after the expiration of [thirty]⁹¹ days from the date of the order complained of unless otherwise specially provided in this Act.

⁹²(3)

215. Appeal against order admitting an appeal.—No appeal shall lie against an order admitting an appeal on the grounds specified in Section 5 of the Indian Limitation Act, 1908.

216. Powers of Appellate Court.—(1) The Appellate Court may either admit or summarily reject the appeal.

(2) If it admits the appeal, it may reverse, vary, or confirm the order appealed against ;

or may direct such further investigation to be made or such additional evidence to be taken as it may think necessary ;

or it may itself take such additional evidence ;

81. Subs. by S. 339 (c), Sch. III, list II, of U. P. Act I of 1951.

82. Subs. by Sch. of U. P. Act XX of 1954.

83. Clause (c) deleted by Sch. of U. P. Act XX of 1954.

84. Sub-ss. (2), (3) and (5) del. by *ibid.*

85. Add. by S. 2 and Sch. to U. P. Act XII of 1922 and deleted by Sch. of U. P. Act XX of 1954.

86. *Avadesh Pratab Singh v. Amar Pratab*

Singh, 1947 R. D. 401.

87. S. 212 del. by S. 339 (c), Sch. III, list II, Sl. 30 of U. P. Act I of 1951.

88. Sub-s. (1) del. by Sl. 32 *ibid.*

89. The words [or second appeal] del. by *ibid.*

90. The words [Record Officer or] *ins.* by *ibid.*

91. Subs. by *ibid* for [sixty].

92. Deleted by U. P. Act XX of 1954.

or it may remand the case for disposal with such directions as it thinks fit.

217. Power to suspend execution of order of lower Court.

—When an appeal is admitted the Appellate Court may, pending the result of the appeal, direct the execution of the order of the lower Court to be stayed.

Limitation.—The limitation for execution of decree for costs is three years⁹³.

218. Power of Commissioner, etc. to call for records and proceedings and reference to State Government or Board.—The Commissioner [the Additional Commissioner],⁹⁴ the Collector, the Record Officer, or Settlement Officer may call for and examine the record of any case decided for proceedings held by any officer subordinate to him for the purpose of satisfying himself as to the legality or propriety of the order passed and as to the regularity of the proceedings;

and, if he is of opinion that the proceedings taken or order passed by such subordinate officer should be varied, cancelled, or reversed, he shall refer the case with his opinion thereon for the orders of the Board,⁹⁵ [if the case is of a judicial nature, or connected with settlement, or for the orders of the [State Government]⁹⁶ if the case is of a non-judicial nature not connected with the settlement];

and the Board [State Government]⁹⁶ as the case may be] shall thereupon pass such orders as it thinks fit.

Scope.—This section deals with revisional powers, which are vested in the Board alone, in judicial matters and in the State Government in case of non-judicial matters. Therefore, if any matter comes to the knowledge of the Commissioner etc., which requires to be corrected it has to be referred to the Board⁹⁷.

Rules.—See paras 164 to 167 of the Revenue Court Manual.

219. Power of State Government or Board to call for files of subordinate officers and to revise orders.—The [State Government]⁹⁸ may call for the record of any non-judicial proceeding [not connected with settlement]⁹⁵ held by any officer subordinate to it, and may pass thereon such orders as it thinks fit.

The Board may call for the record of any case of a judicial nature [or connected with a settlement]⁹⁵ in which no appeal lies to the Board, if the officer by whom the case was decided appears to have exercised a jurisdiction not vested in him by law, or to have failed to exercise a jurisdiction so vested, or to have acted in the exercise of his jurisdiction illegally or with substantial irregularity, and may pass such orders in the case as it thinks fit.

Scope.—The powers of the Board for revision are very wide.⁹⁹ and the Board can take cognizance of any proceedings coming to its notice in any way whatsoever.¹ But where an appeal lies the revision would not be entertained.² No third person, however, has a remedy and so a revision by the wife of a person concerned was held not maintainable in proceedings under Chapter VIII of the Act.³ The Board has no power

93. *Gajodhar Prasad v. Sat Narain*, 4 R. D. 85.

94. *Add.* by S. 17 of U. P. Act II of 1932.

95. *Ins.* by S. 2 and Sch. of U. P. Act XII of 1922.

96. *Subs.* by the A. O. 1930 for [Prov. Govt.] which had been *subs.* by the A. O. 1937 for (L.G.)

97. *Shaman Prasad v. Maharaja of Banaras*, 6 R. D. 233; *Chandresh Singh v. Mahesh Singh*, 1936 R. D. 267; *Rajeshwar Kuar v. Sita Ram Singh*, 1940 R. D. 4.

98. *Subs.* by the A. O. 1950 for [Prov. Govt.] which had been *subs.* by S. 2 and Sch. of U. P. Act XII of 1922 for [Board], as adopted by the A. O. 1937.

99. *Chandresh Singh v. Mahesh Singh*, 1936 R. D. 267.

1. *Sarkar Dullaia v. Kallu*, 12 R. D. 32.

2. *Dwarka Dhishti v. Arbi*, 17 R. D. 675; *Jaswant Singh v. Naurang Singh*, 17 R. D. 75.

3. *Saied Bano v. Rex*, 1951 R. D. 209—1951 A. W. R. 194 (R).

to revise an order passed by Panchayati Adalat or in cases under the Panchayat Raj Act⁴. The Board can entertain revision against an order appointing Ghar-Padhans, malguzars etc. in Kumaun Division.⁵

220. Power of Board to review and alters its order and decrees.—(1) The Board may review, and may rescind, alter or confirm any order made by itself or by any of its members in the course of [business connected with settlement].⁶

(2) No decree or order passed judicially by it or by any of its members shall be so reviewed except on the application of a party to the case made within a period of ninety days from the passing of the decree or order, or made after such period if the applicant satisfies the Board that he had sufficient cause for not making the application within such period.

(3) **Members not empowered to alter each other's orders.**—A single member vested with all or any of the powers of the Board shall not have power to alter or reverse a decree or order passed by the Board or by any member other than himself.

Scope.—The Board has unlimited power of review, but it does not mean that those powers are to be exercised in every case so as to convert a review into a regular appeal. To maintain a review there must be some mistake obvious on the face of the record or some fresh evidence may have become available⁷. The Board has powers to review its orders including orders passed in the course of business connected with the settlement.⁸

CHAPTER XI

Miscellaneous

(A) POWERS

221. Conferring of powers.—In conferring powers under this Act, the [State Government]⁹ may empower persons by name, or classes of officials generally, by their official titles, and may vary or cancel any such order.

222. Powers of officers transferred to another district.—Whenever any person holding an office in the service of [the Government],¹⁰ who has been invested with any powers under this Act in any district in [the Agra Province]¹¹ or Oudh, is transferred to an equal or higher office of the same nature in any other district in * * *¹² he shall unless the [State Government]⁹ otherwise directs, be held to be invested with the same powers under this Act in the district to which he is transferred.

223. Investment of Assistant Collector with powers of Collector.—The [State Government]⁹ may confer on any Assistant Collector of the first class all or any of the powers of a Collector, and all powers so conferred shall be exercised subject to the control of the Collector of the district.

4. *Ranjit Singh v. U. P. Stat.* 1951 R. D. 281; *Bhawani Singh Nar Singh Ahir*, 1952 R. D. 137=1952 A. L. J. 99 (9).

5. *Jai Dill v. Dalip Singh*, 1952 R. D. 357=1922 A. L. J. 219 (R)=1952 A. W. R. 202 (R).

6. *Subs.* for "its non-judicial business" by S. 2 & Sch. of U. P. Act XII of 1922.

7. *Sheo Nath Tware v. Raghunandan*, 1947 A. W. R. 164 (Rev.); *Ram Abilakh v. Debi Prasad*, 1941 R. D. 675. See also *Sheo Mangal Pathak v. Sheo Baran*, 1950 R. D. 86.

8. *Ram Sunder Dube v. Board of Revenue*,

1951 A. L. J. 572=1951 A. W. R. 298 (H. C.)

9. *Subs.* by the A. O. 1950 for [Prov. Govt.] which had been *subs.* by the A. O. 1937 for (L. G.)

10. *Subs.* by the A. O. 1950 for (the Crown) which had been *subs.* by the A. O. 1937 for (Govt.).

11. *Subs.* for [the North-Western Provinces] by S. 15 of U. P. Act II of 1932.

The expression [the Agra Province] shall stand unmodified by A. O. 1950.

12. The words [the said province] *omit.* by the A. O. 1950.

224. Conferring of powers on Tahsildars and Naib-Tahsildars.—The [State Government]⁹ may confer on any Tahsildar all or any of the powers of an Assistant Collector of the second class, and on any Naib-Tahsildar all or any of the powers of a Tahsildar.

225. Collector to have all powers of an Assistant Collector.—The Collector may exercise all or any of the powers of an Assistant Collector under this or any other Act for the time being in force.

226. * * * * *

227. Powers of an Assistant Collector in charge of sub-division.—An Assistant Collector in charge of a sub-division of a district shall, as such, have the following powers :

(1) * * *¹⁴
 (2) to call on owners to erect or repair boundary marks, and in default, to erect or repair and charge the cost to [tenure-holders or Gaon Sabhas]¹⁵ under Section 29 ;

(3) to fine for injuries to boundary or survey marks, and in certain cases apportion the charges of repairing boundary or survey marks under Section 30 ;

(4) to order alterations in the annual registers, under Section 33 ;

(5) to enquire into and decide cases of reported transfers, under [Section 35]¹⁶

¹⁷[(5a) to enquire into and decide applications made under Section 39.]

¹⁸[(6)]

(7) to levy fees for mutations, under Section 37, and fines, under Section 38 ;

(8) to decide disputes and to pass orders, under [Sections 40, 41 and 43] ;¹⁹

[(9) to (17)].²⁰

Scope.—Revenue Courts have no power to grant a permission to a sole proprietor to collect rents in his pattis and prohibit the Lambardar to interfere,²¹ nor they have power to appoint a Lambardar not nominated by other co-sharers.²²

228. Powers of an Assistant Collector of first class not in charge of a sub-division.—An Assistant Collector of the first class not in charge of a sub-division of a district shall exercise all or any of the powers conferred on an Assistant Collector of the first class in charge of a sub-division in such cases or classes of cases as the Collector may, from time to time, refer to him for disposal.

Scope.—The difference between the Assistant Collector I class in charge of a sub-division and one not in charge of sub-division is that the latter can only exercise the powers of the former, when the Collector refers the case triable by the former to him.²³

229. Powers of Assistant Collectors of second class.—Assistant Collectors of the second class shall have power to investigate

13. S. 226 *del.* by S. 339 (c), Sch. III, list II, Sl. 33 of U. P. Act I of 1951.

14. *Omit.* by the A. O. 1937.

15. *Subs.* for the word "owner," by U. P. Act XVI of 1953.

16. *Subs.* for the words "Ss. 35 and 39" by *ibid.*

17. *Added* by Sch. of U. P. Act XX of 1954.

18. Clause (b) *deleted* by *ibid.*

19. *Subs.* by *ibid.*

20. Clauses (9) to (17) *del.* by S. 339 (c), Sch. III, list II, Sl. 34 of U.P. Act I of 1951.

21. *Khunni Lal v. Bakht Bahadur*, 18 R. D. 412.

22. *Sehat Bahadur v. Girja Nandani Devi*, I. L. R. 1950 A 316.

23. *Badri Tewari v. Bachai Chamar*, 1938 R. D. 160.

and report on such cases as the Collector or Assistant Collector in charge of a sub-division of a district may, from time to time, commit to them for investigation and report.

230. Powers of Assistant Record Officers.—An Assistant Record Officer may, subject to the control of the Record Officer, exercise all or any of the powers conferred by this Act on Record Officers.

231. * * *²⁴.

232. * * *²⁵.

(B) JURISDICTION OF CIVIL COURTS

233. Matters excepted from cognizance of Civil Courts.—No person shall institute any suit or other proceeding in the Civil Court with respect to any of the following matters :

(a) the arrangement of [lekhpals']²⁶ [halkas]²⁷.

(b) claims by any person to any of the offices mentioned in ²⁸[Sections 23 and 25], or to any emolument or fees appertaining such office, or in respect of any injury caused by his exclusion therefrom, or claims by any person to nominate person to such offices ;

[(c)]²⁹.

(d) the formation of the record-of-rights or the preparation, signing, or attestation of any of the documents contained therein, or the preparation of the annual registers ;

[(e) to (m)].²⁹

Scope.—This section is not confined to persons paying land revenue and applies to all "persons", and bars all the members of the general public to institute suits or other proceedings in Civil Courts except as provided in clauses (i), (k), (l) and (m)³⁰.

Clause (c).—A suit for a declaration that a certain portion of land is not liable to pay any land revenue separately, but jointly with another land is not maintainable³¹.

Clause (d).—The question of a proprietary right cannot be decided by a Revenue Court ; it can be decided by a Civil Court only and therefore such suits would not be barred³². Thus a suit for declaration that certain lands are held rent-free is not barred³³. For other illustrative cases see the cases in the footnote³⁴.

Clause (e).—The decision of a settlement as to the under-proprietary rent is final and cannot be re-opened in Civil Court³⁵. Similarly a dispute as to contribution to malikana can be decided by Settlement Officer only³⁶.

Clause (g).—A suit questioning the decision of the Settlement Officer under Section 79 is not maintainable³⁷, so also with respect to malikana dues³⁸.

Clause (k).—This clause is general in terms and applies to all partitions as defined in the Act, both perfect and imperfect³⁹. The test of the bar is laid down in

24. S. 231 *del.* by S. 339 (c), Sch. III, list II, Sl. 35 of U.P. Act I of 1951.

25. S. 232 *del.* by S. 339 (c) Sch. III, list II, Sl. 36 of U.P. Act I of 1951.

26. *Subs.* for the word "pauwaris" by U. P. Land Reforms (Amend) Act, 1956.

27. *Subs.* for the word "circles" by U. P. Act XVI of 1953.

28. *Subs.* for "S. 23, 25 or 45" by *ilic*

29. Clause (c) and Clauses (e) to (i) *del.* by Sl. 37 *ibid.*

30. *Daya Ram v. The Secretary of State*, 50 A 354.

31. *Amirullah v. Tagdir-un-nissa*, 13 R. D. 745.

32. *Ibrahim Ali v. Hamid Ali*, 1 A. W. N. 15; *Sunder v. Kkuman Singh*, 1 A 14.

33. *Harnandan v. Chand Mal*, 6 A. W. N.

23.

34. *Tota Ram v. Har Kishen*, 7 A 224; *Murad v. Ram Dayal*, 3 A. W. N. 201; *Ram Prasad v. Dalthaman*, 1 A. W. N. 24; *Jai Gopal v. Radha Prasad Singh*, 14 A. W. N. 81.

35. *Kubera v. Chabraj Kuor*, 1935 R. D. 383.

36. *Gaya Dutt v. Kutub-un-nissa*, 6 A 57 See also 1948 O. W. N. 134 for Scope.

37. *Sahdeo Baksh Singh v. Balbhadra Singh*, 15 R. D. 419.

38. *Bhagwan Singh v. Imrat Singh*, 1938 R. D. 790.

39. *Siraj Fatima v. Mohd. Ali*, 16 R. D. 327; *Kamla Singh v. Rudra Pratab Singh*, 17 R. D. 969; *Mohd. Sadiq v. Laute Ram*, 23 A 191.

*Madho Devi v. Bahadur Khan*⁴⁰. The partition of a mahal or a portion of it is within the exclusive jurisdiction of Revenue Courts. No suit or other proceeding can be instituted in a Civil Court in respect of a partition. It follows that a compromise decree for partition of a mahal cannot be executed by the Civil Court even if decree is passed by it⁴¹.

Clause (n).—This clause cannot be interpreted as to exclude a suit filed by a third party to prove his claim that the property proceeded against belongs to him and not to the defaulter⁴⁹.

(C) POWER TO MAKE RULES

234⁴³. Power of State Government and Board to make rules.—The [State Government]⁴⁴ may make rules⁴⁵ consistent with this Act in respect of matters under clauses (a) to (e),⁴⁶ * * * ⁴⁷ (v) (i),

40. I. L. R. 1946 A 780. See also *Ram Bux Singh v. R. P. Singh*, 1947 R. D. 1.
41. *Jogadish Saran Singh v. Ch. Debi Singh*, I. L. R. 1950 A 326.
42. *Radha Kishan v. Ram Nagar Co-operative Society*, 1950 A. L. J. 546 (F. B.).
43. S. 234 subs. by S. 2 and Sch. of U. P. Act XII of 1922.
44. Subs. by the A. O. 1950 for [Prov. Govt.] which had been subs. by the A. O. 1937 for (L. G.)
45. For Rules—
 - (i) for giving effect to the provisions of the Act, see Not. No. 2122/I—571 F, d. July 16, 1902, and No. 5256/I-A—453-1926, d. Dec. 21, 1926 in *Gazette* 1902, Pt. I p. 471, and *ibid*, 1926, Pt. I, p. 1263, respectively ;
 - (ii) re. construction of permanent wells during the currency of a settlement, see Not. No. 2358/I—643-1906, d. Aug. 27, 1917, in *Gazette* 1907, Pt. II, p. 1375 ;
 - (iii) re. revision of maps and records in Agra and in Oudh, see Not. No. 6340/I—643, d. Aug. 6, 1923, in *Gazette* 1923, Pt. I, p. 1018 ;
 - (iv) for the registration of clerks of law practising in Revenue Courts, see Not. No. 340/I—385, d. Feb. 6, 1922, in *Gazette* 1922, Pt. I, p. 219 ;
 - (v) defining the judicial or non-judicial matters, see Not. No. 5811/I-A—418, dated June 21, 1933, in *Gazette* 1923, Pt. I, p. 639 and Not. No. 359/I-A—41 B-1933, d. March 9, 1933, in *ibid*, 1933, Pt. I, p. 253, No. 9020/I-910-B, d. May 22, 1947.
 - (vi) authorizing patwaris to deliver certified copies of records, see Not. No. 2498/I-B—323, d. June 29, 1927, in *Gazette* 1927, Pt. I, p. 728.
 - (vii) for forms for preparation and attestation of the records-of-rights in certain *abadi* areas, see Not. No. 3036/I-A—197-1925, d. August 16, 1927, in *Gazette* 1927, Pt. I, p. 967 ;
 - (viii) for the record of *nautor* cultivation in the patwari papers, see Not. No. 974/I-A—158-1928, d. June 19, 1928, in *Gazette* 1928, Pt. I, p. 588 ;
 - (ix) relating to Settlements, see Not. No. 855/I-A—197-A, d. June 6, 1929, in *Gazette* 1920, Pt. VIII, p. 815 ;
 - (x) re-preparation of record of nazul land in Agra Municipality, see Not. No. 1594/I-A—447, d. October 22, 1929, in *Gazette* 1929, Pt. I, p. 985 ;
 - (xi) re-change in method of recruitment of supervisor kanungos, see Not. No. 1048/I-B—612, d. May 8, 1931, in *Gazette* 1931, Pt. I, p. 489 ;
 - (xii) for maintaining a record of all municipal and nazul lands within the Firozabad Municipality, see Not. No. 2570/I-A—498-931, d. February 1, 1933, in *Gazette* Pt. I, p. 120 ;
 - (xiii) for the record and attestation of cesses in Puranpur Tahsil, Pilibhit district, see Not. No. 376 (3)/1-A—444-1932, d. March 10, 1933, in *Gazette* 1933, Pt. I, p. 269-279 ; prescribing the form, etc., of the record-of-rights in the areas comprised within (a) the Hardwar Union Municipal Board, (b) Ghaziabad Municipality, (c) Nawabganj Municipality (d) *abadi* of Kiraioli, district Agra, and (e) certain areas within the Bahraich Municipality, see Not. 30/I-A d. February 8, No. 496, III/I-A., d. March 18, No. 2625/I, d. November 16, 1935, No. 1607/I—32-36, d. July 21, 1936, and No. 2337/I, d. October 26, 1937, in *Gazette* 1935, Pt. I, pp. 341-344, pp. 526-530, pp. 1432-1437, *ibid*, 1936, Pt. VIII, p. 169-172, and *ibid*, 1937, Pt. VIII, pp. 915-918, respectively ;
 - (xiv) re-recovery of cost of extra staff for collection of co-operative dues, see Not. No. 1158-VI/I-A—171 B-1932, d. June 27, 1934, in *Gazette* 1934, Pt. I, pp. 631-632 ; for the appointment, removal, suspension, dismissal and transfer of patwaris, see Not. No. 1756/I, d. July 17, 1937, in *Gazette* 1937, Pt. I, p. 1384.
46. Subs. for [f] by S. 339 (c) Sch. III, list II, Sl. 38 of U. P. Act I of 1951.
47. Reference to Cls. (m), (f), (o) to (s) here omit, because these Cls. have been del. by *ibid*.

(w) (i), (x) (i), and (y) and the Board may from time to time, subject to the sanction of the State Government make rules,⁴⁸ consistent with this Act in respect of matter under clauses * * *⁴⁰ (v) (ii), (w) (ii), and (x) (ii)—

(a) prescribing the duties of Tahsildars and Naib-Tahsildars, and regulating their postings and transfers and their appointment in temporary vacancies ;

(b) [Deleted by Sch. of U. P. Act XX of 1954 ;]

(c) regulating the extent to which preference may be given in the

48. For rules—

- (i) relating to references and revisions under the Act, *see* B. R. Not. No. 945/Judl.—334-B, d. October 28, 1927, in *Gazette* 1927, Pt. II, p. 1059, No. 13715/Judl.—910-B, d. September 25, 1946, No. 4219/I—524, d. March 9, 1947.
- (ii) re. the appointment of kanungos and patwaris in hill patts of the Kumaun Division, *see* B. R. Nots. No. 95/VII—496 of 1908, d. April 23, 1908, No. 152/VII—140-A, d. September 10, 1949, No. 147/VII—496, d. July 21, 1910, and No. 149/VII—496, d. July 21, 1910, in *Gazette* 1908, Pt. II p. 677. *ibid*, 1909, Pt. II, p. 1540. *ibid*, 1910, Pt. II, pp. 1213 and 1214, respectively ; also *see* one Not. in *Gazette* 1908, Pt. II, p. 1404 ;
- (iii) relating to the record of transfer, etc., *see* B. R., Not. No. 439/II—422 A, d. September 28, 1908, in *Gazette* 1908, Pt. I p. 1594 ;
- (iv) re. mutation of names in the record-of-rights in the Kumaun Division, *see* B. R. Nots. No. 377/II—304-A, d. August 18, 1910, No. 491/II—304-A, d. November 4, 1910, and No. 460/II—304-A, d. September 27, 1911, in *Gazette* 1910, Pt. II, p. 1446, *ibid*, 1910, Pt. II, p. 1933, and *ibid*, 1911, Pt. II, p. 1713, respectively ;
- (v) for the appointment of a lambar-dar of the Gursarai Estate in the Jhansi District, *see* B. R. Nots. No. 134/XI—921, d. April 17, 1914, and No. 4394/I-B.—110-1926, d. November 3, 1926, in *Gazette* 1914, Pt. II, p. 1010 and *ibid*, 1926, Pt. I, p. 1062, respectively ;
- (vi) of procedure for the settlement of private boundary disputes, *see* B. R. Not. No. 942/Judl.—384-B, d. October 24, 1927, in *Gazette* 1927, Pt. II, p. 1025 ;
- (vii) for maintenance and custody of livestock, *see* B. R. Not. No. 600/Judl.—484-B, d. July 12, 1928, in *Gazette* 1928, Pt. II, pp. 874—876, No. 405/I—1932, May 3, 1940, in *Gazette* 1940, Pt. I-A, p. 267.
- (viii) relating to affidavits, *see* B. R. Nots. No. 931/Judl.—384-B, d. Oct. 19 1927, and No. 741/Judl.—384-B, d. Sept. 8, 1938, in *Gazette* 1927, Pt. II, p. 1033 and *ibid*, 1933, Pt. II, pp. 139—140, No. 2337/Judl.—910, d. Feb. 17, 1947.
- (ix) relating to summonses and processes, *see* B. R. Not. No. 598/Judl.—384-B, d. July 11, 1928, in *Gazette* 1928, Pt. II, p. 874, No. 1448/Judl.—910-B, d. Oct. 16, 1946.
- (x) relating to execution of decrees of Revenue Courts. *see* B. R. not no. 600/Judl.—374-B, d. July 12, 1928, in *Gaz.*, 1928, Pt. II, p. 874, no. 97/Judl.—910-B d. Jan. 3, 1947 ;
- (xi) affecting the procedure of Revenue Courts, *see* B. R. not. no. 643/Judl.—384-B, d. July 26, 1928 ; in *Gaz.*, 1928, Pt. II, p. 928.
- (xii) relating to appeals under the Act, *see* B. R. not. no. 532/Judl.—384-B, d. July 30, 1929, in *Gaz.*, 1929, Pt. II, p. 835 ;
- (xiii) relating to assessment of alluvial ma als in temporarily settled districts, *see* B. R. not. no. 561/Sett.—153-D, d. Sept. 26, 1935, in *Gaz.*, 1935, Pt. II, pp. 771—787, and B. R. not. no. 2176/Sett.—153-D, d. June 14, 1939, in *Gaz.*, 1939, Pt. I-A, pp. 188—189 ;
- (xiv) for preparation of traditional boundary maps in Kumaun, *see* B. R. not. no. 623/Sett.—561-D, d. Feb. 18, 1937, in *Gaz.*, 1937, Pt. II, p. 2365.
- (xv) for regulating the maintenance and custody of live-stock and other movable property attached under S. 146 (C) of the Act.
- (xvi) For rules re : grant of lease of and ultimately of ownership in waste in U. P. except Kumaun, *see* not. no. 317-R 46/I—228 (2)—39, d. Aug. 26, 1946 in *Gaz.*, 1946, Pt. I-A, pp. 903—906.
- (xvii) For rules re : general conduct of business and procedure of Revenue Courts *see* not. no. 12658/Judl.—910-B, d. Sept. 5, 1946, in *Gaz.*, 1946, Pt. I-A.

49. Reference to cls. (g) to (l), m (ii), (n), (t), (u) here omit. because they have been del. by S. 339 (c), Sch. III List II, Sl. 38 of U. P. Act I of 1951.

appointment of Kanungos to persons of families in which the office of Kanungo is hereditary ;

- (d) prescribing the form, contents, method of preparation, attestation, and maintenance of the record-of-rights and other records, maps, field-books, registers, and lists made or kept under this Act [and prescribing the kind of land, if any, in respect of which any such record need not be prepared under Section 32]⁵⁰ ;

- (e) regulating the imposition of fines, under Section 38, for failure to notify successions and transfers ;

(f) * * *⁵¹.

(v) (i) regulating the costs which may be recovered in, or in respect of, any non-judicial proceedings * * *⁵² under this Act ;

(ii) regulating the costs which may be recovered in or in respect of any judicial * * *⁵² proceeding under this Act * * *²

(w) (i) regulating the procedure to be followed by any officer (or other person) who under any provision of this Act is required or empowered to take action in any non-judicial matter * * *⁵² ;

(ii) regulating the procedure to be followed by any officer (or other person) who under any provision of this Act is required or empowered to take action in any judicial * * *⁵² matter ;

(x) (i) generally for the guidance of all persons in all non-judicial proceedings * * *⁵² under this Act and for carrying out the provisions of this Act in respect of such proceedings ;

(ii) generally for the guidance of all persons in all judicial * * *⁵² proceedings under this Act and for carrying out the provisions of this Act in respect of such proceedings ; and

(y) defining classes of cases, matters, businesses, orders or proceedings which are to be deemed judicial or non-judicial respectively.

THE FIRST SCHEDULE

(See Section 1)

Serial
num-
ber

Areas

The Kumaun Division, consisting of the districts of ^{52a} Naini Tal, Almora and Garhwal (exclusive of the settled tracts of the Tarai sub-division of the Naini Tal District).

In the Mirzapur District—

- (1) The tappa of Agori Khas and south Kon, in the pargana of Agori.
- (2) The tappa of British Singrauli, in the pargana of Singrauli.
- (3) The tappas of Phulwa Dudhi and Barha, in the pargana of Bechipar.
- (4) The Dudhi Kham es ate.

3

***⁵³,

4 J The tract of country known as Jaunsar-Bawar, in the Dehra Dun District.

50. *Add.* by S. 53 of U. P. Act XI of 1941 made by the Governor in exercise of the powers assumed by him under S. 93 of G. of I Act, 1935, as continued by S. 2 and Sch. of U. P. Act XIII of 1948.
51. Cls. (g) to (u) *del.* by S. 339 (c), Sch. III, List II of U. P. Act I of 1951. *See* also item 12 of the Sch. to U. P. Act XVI of 1953.
52. The words [not connected with settlement] in cl. (v) (i), [or settle-

ment] and [other than costs recoverable by the Provl. Govt. in proceedings in partition cases] in cl. (v) (ii) [not connected with settlement] in cl. (w), (i), [or settlement] in cl. (w) (ii), [not connected with settlement] in cl. (x) (i) and [or settlement] in cl. (x) (ii) *del.* by S. 339 (e), Sch. III List II of U. P. Act I of 1951.

52a. The Act, with certain modifications and restrictions, has since been extended under Ss. 5 & 5-A of the

THE SECOND SCHEDULE

(See Section 2)

Acts repealed	Extent of repeal
Act No. XIX of 1873	The Agra Province Land Revenue Act. ⁵⁴
Act No. XVII of 1876	The Oudh Land Revenue Act.
Act No. VIII of 1879 ⁵⁵	The Agra Province Land Revenue Act, 1879. ⁵⁴
Act No. IX of 1889 ⁵⁶	The United Provinces Kanungos and Patwaris Act, 1889. ⁵⁴
Act No. XX of 1890 ⁵⁷	The North-Western Provinces and Oudh Act, 1890.
	The whole, so far as not already repealed.
	The whole, so far as not already repealed.
	Sections 2 to 17 and 25 to 27, inclusive.
	Sections 10, 11, 12, 17 and 19.
	Sections 3, 4, 12, to 16, 18 to 20, 21 (so far as not already repealed) 22 to 27, 32 to 34 and 64.

THE U. P. LAND TENURES (REGULATION OF TRANSFERS) ACT, 1952

(U. P. Act No. XV OF 1952)

CONTENTS

Sections	Sections
1. Short title, extent and commencement.	3. Leases and transactions made or registered after the appointed date to be <i>void ab initio</i> .
2. Definitions.	

(As passed by the U. P. Legislature)

AN ACT

to regulate certain transfers of land by intermediaries

Whereas the U. P. Zamindari Abolition and Land Reforms Act, 1950, has come into force ;

And whereas it is expedient for avoidance of transitional difficulties consequent upon the said enforcement to regulate certain transfers of land by intermediaries ;

It is hereby enacted as follows :

1. Short title, extent and commencement.—(1) This Act may be called the U. P. Land Tenures (Regulation of Transfers) Act, 1952.

(2) It extends to the area in which the U. P. Zamindari Abolition and Land Reforms Act, 1950, is in force under sub-section (3) of its Section 1.

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| <p>Scheduled Districts Act, 1874 (Act XIV of 1874), <i>rep</i> by A. O., 1937 to these districts.</p> <p>53. Serial No. 3 <i>omit.</i> by S. 2 & Sch. of U. P. Act VI of 1915.</p> <p>54. As to the method of citing these Acts <i>see</i> S. 28 (2) of the U. P. General Clauses Act, 1901 (U. P. Act I of 1904), <i>supra</i>.</p> | <p>55. The rest of the Act <i>rep.</i> by the U. P. Local and Rural Police Rates Act, 1906 (U. P. Act II of 1906), which was <i>rep.</i> by U. P. Act I of 1914.</p> <p>56. The rest of the Act <i>rep.</i> by U. P. Act IV of 1906, which was <i>rep.</i> by U. P. Act XVIII of 1919.</p> <p>57. Vol. I.</p> |
|--|---|

(3) It shall and be deemed to have come into force with effect from the "appointed date".

Note.—The Act was assented by the Governor on June 15, 1952 and the English translation of the Act was published in the U. P. Gazette Extraordinary, dated June 23, 1952.

2. Definitions.—In this Act, unless there is anything repugnant in the subject or context—

- (a) "appointed date" means the twenty-first day of May, 1952,
- (b) "intermediary" as respects any land means a proprietor, an under-proprietor, a sub-proprietor, a thekedar and a permanent lessee in Avadh, and a permanent tenure-holder,
- (c) "lease" includes a rent-free grant or a grant at a favourable rate of rent, and
- (d) words and expression not defined in this Act and defined in the U. P. Tenancy Act, 1939, shall have the meaning assigned to them in that Act.

3. Leases, and transactions made or registered after the appointed date to be void *ab initio*.—Notwithstanding anything contained in any law or contract to the contrary—

- (1) a lease of land by an intermediary either granted or registered on or after the appointed date shall be and is hereby declared null and void from the date of execution and the lessee shall for purposes of Section 180 of the U. P. Tenancy Act, 1939 and Section 209 of the U. P. Zamin-dari Abolition and Land Reforms Act, 1950, be deemed to be a person in possession of the land otherwise than in accordance with the provisions of the law for the time being in force;
- (2) a transaction between an intermediary and a tenant conferring on the tenant a right to transfer by sale his holding or any part thereof either made or entered into or registered on or after the appointed date, shall be and is hereby declared null and void from the date of execution.

Explanation.—"Registration" in this section means registration in accordance with the law for the time being in force relating to registration of documents and includes attestation under Section 57 of the U. P. Tenancy Act, 1939.

UTTAR PRADESH LANGUAGE (BILLS AND ACTS) ACT, 1950

(U. P. ACT No. I OF 1950)

CONTENTS

Sections

1. Short title and commencement

Sections

2. Hindi to be used in Bills and Acts.

(Passed by the Uttar Pradesh Legislative Assembly on February 8, 1950, and by the Uttar Pradesh Legislative Council on February 7, 1950.)

(Received the assent of the Governor on February 10, 1950, under Article 200 of the Constitution of India and was published in the Uttar Pradesh Gazette, Extraordinary, dated February 10, 1950).

AN ACT

to prescribe the language for use in Bills and Acts

Whereas clause (3) of Article 348 of the Constitution of India provides *inter alia* that language for use in Bills introduced in, or Acts passed by, the Legislature of a State may, if the Legislature has so prescribed, be other than the English language.

It is hereby enacted as follows:—

1. Short title and commencement.—(1) This Act may be called the Uttar Pradesh Language (Bills and Acts) Act, 1950.

(2) It shall come into force at once.

2. Hindi to be used in Bills and Acts.—The language for use in Bills introduced in, or Acts passed by, the Legislature of the State of Uttar Pradesh shall be Hindi in Devanagiri script.

THE UTTAR PRADESH LAWS (EXPIRATION) ACT, 1950

(U. P. Act No. XXVIII of 1950)

Authoritative English text of the Uttar Pradeshiya Vidhiyon ka (Samapati Sabandhi) Adhiniyan, 1950

AN ACT

to remedy the inconvenience which has arisen and may arise from the expiration of Acts before the passing of Acts to continue the same.

Whereas Bills for the continuing of Acts in force only for a limited time have sometimes not passed before the expiration of the Acts intended to be continued and great inconvenience may arise therefrom ;

It is hereby enacted as follows :

Prefatory Notes.—For Statement of Objects and Reasons, please see *Uttar Pradesh Gazette (Extraordinary)*, dated July 11, 1950.

Passed in Hindi by the Uttar Pradesh Legislative Assembly on July 28, 1950, and by the Uttar Pradesh Legislative Council on July 12, 1950.

Received the assent of the President on September 12, 1950, under Article 201 of the Constitution of India and was published in the *Uttar Pradesh Gazette*, dated September 23, 1950.

Published in the *Uttar Pradesh Gazette*, dated September 23, 1950.

1. (1) This Act may be called the Uttar Pradesh Laws (Expiration) Act, 1950.

(2) It shall be deemed to have had effect from the first day of June, 1950.

2. In this Act, the expressions—

(a) "Governor" means the Governor of Uttar Pradesh ;

(b) "President" means the President of India.

3. Where any Bill may have been or shall be introduced in this present or any future session of the State Legislature, for the continuance of any Act which would expire in such sessions, and such Act shall have expired before the Bill for continuing the same shall have received the assent of the President or the Governor, as may be necessary, such continuing Act shall be deemed and taken to have effect from the date of the expiration of the Act intended to be continued, as fully and effectually, to all intents and purposes, as if such continuing Act had actually passed before the expiration of such Act, except it shall be otherwise especially provided in such continuing Act; provided nevertheless, that nothing herein contained shall extend, or be construed to extend, to affect any person or persons with any punishment, penalty, or forfeiture whatsoever, by reason of anything done or omitted

§. 2] UTTAR PRADESH LAWS (EXTENSION OF APPLICATION) ACT, 1951 1597

to be done, by any such person or persons contrary to the provisions of the Act so continued, between the expiration of the same and the date at which the Act continuing the same may have received or shall receive the assent.

**UTTAR PRADESH LAWS (EXTENSION OF APPLICATION)
ACT, 1951**

(U. P. ACT No. XIV OF 1951)

CONTENTS

<i>Sections</i>	<i>Sections</i>
1. Short title and commencement.	4. Repeal of corresponding law.
2. Definitions.	5. Savings.
3. Extension of laws.	

Authoritative English text of the Uttar Pradesh Vidhiyon ki Pravritte ki Prasar (Extension of Application) ka Adhiniyam, 1951.

AN ACT

to extend certain laws to the Jaunsar-Bawar Pargana of the Dehra Dun District and the portion of the Mirzapur District south of the Kaimur Range.

Whereas the Jaunsar-Bawar Pargana of the Dehra Dun District and the portion of the Mirzapur District south of the Kaimur Range were administered as partially excluded areas prior to the commencement of the Constitution ;

And whereas these areas are not scheduled areas under the Constitution ;

And whereas it is expedient to provide that certain laws which are in force in Uttar Pradesh but do not apply to these areas should be enforced in such areas,

It is hereby enacted as follows :

Prefatory Note.—For Statement of Object and Reasons, please see Uttar Pradesh Gazette Extraordinary, dated February 20, 1951.

Passed in Hindi by the Uttar Pradesh Legislative Assembly on February 23, 1951, and by the Uttar Pradesh Legislative Council on February 28, 1951.

Received the assent of the President on March 31, 1951, under Article 201 of the Constitution of India and was published in the Uttar Pradesh Gazette, dated April 14, 1951.

1. Short title and commencement.—(1) This Act may be called the Uttar Pradesh Laws (Extension of Application) Act, 1951.

(2) It shall come into force at once.

2. Definitions.—In this Act unless there is anything repugnant in the subject or context—

(a) "Appointed date" means the date immediately before the commencement of this Act ;

(b) "Law", in Sections 4 and 5, means any Order, rule, or by law passed or made under any enactment not in force in the partially excluded areas on the appointed date ;

(c) "Partially excluded areas" means areas known as the Jaunsar-Bawar pargana of the Dehra Dun District and the portion of the Mirzapur District south of the Kaimur Range, and includes, where the context so requires, any one of these areas or portion thereof ; and

(d) "State Government" means the Government of Uttar Pradesh.

3. Extension of laws.—(1) Notwithstanding anything contained in any law, all enactments in force in, or applicable to, Uttar Pradesh on the date of the commencement of this Act, as relate to matters with respect to which the State Legislature has power to make laws for Uttar Pradesh and as are not already applicable to or in force in the partially excluded areas are hereby extended to such areas subject to—

(i) any amendment to which they were generally subject to in, or in their application to, Uttar Pradesh on the date aforesaid, and

(ii) the subsequent provisions of this Act.

(2) Notwithstanding anything in any enactment referred to in sub-section (1), such enactments shall come into force with effect from such date as the State Government may by notification in the official *Gazette* appoint in that behalf and different dates may be appointed for different provisions thereof and for different areas.

4. Repeal of corresponding law.—If on the appointed date there is in force in the partially excluded areas any law corresponding to the enactment referred to in sub-section (1) of Section 3, such corresponding law shall, with effect from the date and to the extent to which an enactment comes into force under and in accordance with the provisions of Section 3, stand repealed in the respective partially excluded area.

5. Savings.—(1) The repeal of any corresponding law under Section 4 shall not affect—

(a) the previous operation of any such law, or

(b) any penalty, forfeiture or punishment incurred in respect of any offence committed against any such law, or

(c) any investigation, legal proceeding or remedy in respect of any such penalty, forfeiture or punishment,

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if this Act had not been passed.

(2) Subject to the provisions of sub-section (1) anything done or any action taken including any appointment or delegation made, notification, order, instruction or direction issued, scheme framed, certificate, patent, permit or licence granted or registration effected, under such corresponding law shall, in so far as it is not inconsistent with the enactments referred to in Section 3 as now extended to and in force in the partially excluded area—

(a) be deemed to have been done or taken under the corresponding provision of the said enactment, and

(b) continue in force unless and until directed otherwise or superseded by anything done or any action taken under the said enactment by the State Government or other competent authority.

THE UTTAR PRADESH LEGISLATIVE CHAMBERS (MEMBERS' EMOLUMENTS) ACT, 1952

(U. P. Act No. XII of 1952.)

CONTENTS

Sections

1. Short title and commencement.
2. Travelling and daily allowance.
3. Salary.

Sections

4. Repeal of U. P. Act No. V of 1938.
5. Power to make rules.

Authoritative English text of the Uttar Pradesh Vidhan Mandal (Sadasyon ki Uplabdhaiyon ka) Adhiniyam, 1952.

AN ACT

to provide for the salaries and allowances of members of the U. P. State Legislature.

Whereas it is expedient to fix the salaries and allowances of members of the U. P. Legislature.

It is hereby enacted as follows :

Prefatory Note.—For Statement of Objects and Reasons, please see Uttar Pradesh Gazette (Extraordinary), dated May 19, 1952.

Passed in Hindi by the Uttar Pradesh Legislative Assembly on May 28, 1952, and by the Uttar Pradesh Legislative Council on May 31, 1952.

Received the assent of the Governor on June 5, 1952, under Article 200 of the Constitution of India and was published in the Uttar Pradesh Gazette Extraordinary, dated June 7, 1952.

Published in the Uttar Pradesh Gazette Extraordinary, dated June 7, 1952.

1. Short title and commencement.—(1) This Act may be called the U. P. Legislative Chambers (Members' Emoluments) Act, 1952.

(2) It shall come into force at once.

2. Travelling and daily allowance.—Subject to such conditions and restrictions as may be prescribed by rules to be made by the State Government under this Act, each member of the Uttar Pradesh Legislative Assembly or of the Uttar Pradesh Legislative Council, who does not hold the office of Minister, Speaker, Chairman, Deputy Minister or Parliamentary Secretary, shall be entitled for his attendance required in connexion with his duties or functions as member, to—

(1) travelling allowance for every journey by air or rail to one and one half times the railway fare for class I and for journeys by road mileage at the rate admissible to gazetted officers of class I; and

(2) daily allowance at the rate of rupees ten in the plains and rupees fifteen in the hills.

3. Salary.—Each member of the Uttar Pradesh Legislative Assembly or of the Legislative Council who does not hold the office of Minister, Speaker, Chairman, Deputy Minister, Deputy Speaker, Deputy Chairman or Parliamentary Secretary shall be entitled to receive, in addition to the travelling allowance and daily allowance referred to in Section 2, a salary of rupees two hundred per mensem; provided that such salary shall be liable to such deduction for continued absence or other cause as may be provided in the rules made by the State Government in this behalf.

4. Repeal of U. P. Act No. V of 1938.—The U. P. Legislative Chambers (Members' Emoluments) Act, 1938 is hereby repealed.

5. Power to make rules.—(1) The State Government may make rules for the purpose of carrying into effect the provisions of the Act.

(2) Without prejudice to the generality of foregoing power, such rules may provide for—

(a) the periods during which, and the conditions under which, daily allowance may be drawn, and the circumstances under which such allowances may be withheld;

(b) the conditions under which and the journeys for which travelling allowance including road mileage may be claimed;

(3) The rules made under this Act shall be laid for not less than seven days before the U. P. State Legislature as soon as they are made and shall be subject to such modification as the Legislature may make during the session in which they are so laid.

THE U. P. LEGISLATURE MEMBERS (NATIONAL PLAN LOAN) (PREVENTION OF DISQUALIFICATION) ACT, 1954

(U. P. Act No. XXIII OF 1954)

CONTENTS

1. Short title and commencement. 2. Definitions.

[Authoritative English Text of the Uttar Pradesh Vidhan Mandal Sadusya (Rashtriya Niyojan Rins) (Anarhata Newaran) Adhiniyam, 1954]

AN ACT

to enable members of Uttar Pradesh Legislature to take their due share in the achievements of success of National Plan Loan Scheme and also to provide against incurring by them by so partaking the disqualification under sub-clause (a) of clause (1) of Article 191 of the Constitution.

Whereas the Central Government has introduced a scheme for the issue of National Savings Certificate for the purpose of financing projects for the development of the Country ;

And whereas with a view to enable members of Uttar Pradesh Legislature to take their due share in the achievement of this National objective, it is necessary immediately to provide against incurring by them by so partaking the disqualification under sub-clause (a) of clause (1) of Article 191 of the Constitution ;

It is hereby enacted in the fifth year of the Republic of India as follows :

1. Short title and commencement.—(1) This Act may be called the U. P. Legislature Members (National Plan Loan) (Prevention of Disqualification) Act, 1954.

(2) It shall come into force at once.

2. Definitions.—In this Act unless the subject or context otherwise requires—

(a) "Government Security" has the meaning assigned to it in the Indian Securities Act, 1920.

(b) "National Plan Certificate" includes—

(i) 12 years' National Savings Certificate,

(ii) 10 years' National Plan Certificate, and

(iii) any other savings certificate or Government security notified in that behalf by the State Government ; and

(c) "State Government" means the Government of Uttar Pradesh.

1. For S. O. R. see *Gazette* Extraordinary, dated September 15, 1954. for discussion, see L. A. Pro., dated October 11, 1954, in Vol. CXLIII, page 20, and L. C. Pro., dated September 21, 1954 in Vol. XXXVII, pages 150—152.

Passed in Hindi by the Uttar Pradesh Legislative Council on Septem-

ber 21, 1954, and by the Uttar Pradesh Legislative Assembly on October 21, 1954.

Received the assent of the Governor on November 23, 1954; under Article 200 of the Constitution of India and was published in the *Uttar Pradesh Gazette* Extraordinary, dated November 26, 1954.

3. Prevention of disqualification of membership of the State Legislature.—It is hereby declared that a person shall not be, and shall be deemed never to have been disqualified for being chosen as and for being a member of the Uttar Pradesh Legislative Assembly or the Uttar Pradesh Legislative Council by reason that he is agent, or holds other like office under the Government of India or the Government of Uttar Pradesh for the purpose of effecting sales of, or collecting subscriptions towards National Plan Certificates for such commission as the Government of India may have fixed in that behalf, or without such commission.

THE UTTAR PRADESH LEGISLATIVE CHAMBERS (MEMBERS' EMOLUMENTS) ACT, 1938

(U. P. ACT No. V OF 1938)

CONTENTS

Sections

Preamble.

1. Short title and commencement.
2. Travelling and daily allowance.
3. Salary.

Sections

4. Saving of other salaries and allowances.
5. Power to make rules.

(Received the assent of the Governor on July, 7, 1938, and was published under Section 75 of the Government of India Act, 1935, on July 23, 1938.)

AN ACT

to provide for the salaries and allowances of members of the Uttar Pradesh Legislature.

Preamble.—Whereas it is expedient to fix the salaries and allowances of Members of the Uttar Pradesh Legislative Chambers ;

It is hereby enacted as follows :

Prefatory Note.—For S. O. R., see *Gazette*, 1938, Pt. VII, pp. 19-20 ; for R. S. Com., see *ibid*, Extra., d. April 4, 1938, pp. 3-5 ; for discussion, see L. A. Pro., d. March 1, 8, and 29, and April 21 and 25, 1938, in Vol. IV, pp. 53 and 572-573, Vol. V, p. 605, and Vol. VI, pp. 747-763, 947, 1031 and 1090, 1149, respectively, and L. C. Pro., d. May 6, 11, 19, 20, 23 and 25, 1938, in Vol. III, pp. 24, 308, 542-578 581, and 616-634, 757-762 and 842-874, respectively.

Legislative changes.—The words [Uttar Pradesh] and [State] were substituted for the words 'United Provinces' and 'Provincial' throughout the Act, by A. O. 1950.

1. Short title and commencement.—This Act may be called the Uttar Pradesh Legislative Chambers (Members' Emoluments) Act, 1938.

2. Travelling and daily allowance.—Subject to such conditions and restrictions as may be prescribed by rules made under this Act, every member of the Uttar Pradesh Legislative Assembly or of the Uttar Pradesh Legislative Council, who does not hold the office of the Minister, Speaker, [Chairman] or Parliamentary Secretary shall be entitled for his attendance required in connection with his duties as member, to—

- (i) travelling allowance for the journeys by rail at the rate [admissible to first class gazetted officers ;]
- (ii) for journeys performed by road, mileage at [the rate admissible to first class gazetted officers ;] and
- (iii) daily allowance at such rates not exceeding (rupees ten in the plains and rupees fifteen on the hills) as may be prescribed by the rules.

Legislative changes :—The words in brackets were substituted for the words 'President' in the first para by A. O. 1950. The words in brackets in clauses (i), (ii) and (iii) were substituted by U. P. Act VIII of 1946.

3. Salary.—Every member of the Uttar Pradesh Legislative Assembly and of the Legislative Council who does not hold the office of Minister, Speaker, Chairman, or Parliamentary Secretary shall be entitled to receive, in addition to the travelling allowance and daily allowance referred to in Section 2, a salary of rupees [two hundred] per mensem; provided that such salary shall be liable to such deduction for continued absence or other cause as may be provided in the rules made by the State Government in this behalf.

Legislative changes :—The words in brackets between 'Speaker' and 'or' were substituted for [President] by A. O. 1950 and the words in brackets between 'rupees' and 'per' were substituted by U. P. Act VIII of 1946.

4. Saving of other salaries and allowances.—Nothing in this Act shall prevent a member of the Uttar Pradesh Legislature from drawing any other salary or allowances or pension in addition to the salaries or allowances to which he may be entitled under this Act.

5. Power to make rules.—The State Government shall make rules—

- (a) to prescribe the periods during which, and the conditions under which, daily allowance may be drawn, and the circumstances under which such allowances may be withheld;
- (b) to fix the rates of daily allowance;
- (c) to prescribe the conditions under which and the journeys for which travelling allowance may be claimed;
- (d) generally for carrying out the purposes of this Act.

Note :—For rules, see Noti. No. 87/XVII-306-37, d. Feb. 22, 1939, and No. 1526/XVII-306-37, d. Oct. 16, 1939, in *Gaz.*, 1939, Pt. I-A, pp. 23-26 and 348, respectively.

THE UTTAR PRADESH LEGISLATIVE MEMBERS REMOVAL OF DISQUALIFICATION ACT, 1940

(U. P. ACT No. VII OF 1940)

CONTENTS

<i>Sections</i> Preamble. 1. Short title.	<i>Sections</i> 2. Removal of disqualification.
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(As continued by U. P. Expiring Laws Continuance Act, 1948 and adapted by A. O. 1950.)

(Received the assent of the Governor on 26th June, 1940, and was published in the State Government Gazette, on 29th June 1940.)

AN ACT

to remove the disqualification of members of the Uttar Pradesh Legislature from holding of office of profit in [Government of India] Naval, Military or Air Forces in India.

Preamble.—Whereas by the Proclamation, dated the third day of November, 1939, promulgated under Section 93 of the Government of India Act, 1935, the Governor of the Uttar Pradesh has assumed to himself all powers vested by or under the aforesaid Act in the State Legislature.

And whereas clause (a) of sub-section (1) of Section 69 of the aforesaid Act provides that the State Legislature may declare that the holder of a particular office under the [Government] in India shall not be disqualified for being [chosen as, or for being, a member of a State Legislature.

And whereas it is expedient that persons who may hold an office of profit in the Army in India Reserve of Officers, Indian Territorial Force, or other branches of Naval, Military or Air Forces should not be disqualified for being chosen as, or for being a member of the Uttar Pradesh Legislative Assembly or Legislative Council.

Now, therefore, the Governor in exercise of the powers aforesaid is pleased to make the following Act :

Prefatory Note :—This Act was made by the Governor in exercise of the powers assumed by him by the Proclamation d. No v. 3, 1939, issued under Section 93 of the G. of I. Act, 1935, and was published, with Statement of Objects and Reasons in *Gaz.*, 1940, Pt. VII-A, pp. 8-9.

Legislative changes :—The words (Uttar Pradesh), (State) and (Govt.) were substituted for the words 'United Provinces' 'Provincial' and 'Crown' by A. O. 1950 throughout the Act. The words (His Majesty's) between 'in' and 'Naval' in the first para and between 'of' and 'Naval' in the fourth para were omitted by *ibid*.

1. Short title.—This Act may be called the Uttar Pradesh Legislative Members' Removal of Disqualification Act, 1940.

2. Removal of disqualification.—No person shall by reason only of his holding an office of profit under the [Govt.] in the Army in India Reserve of Officers, in the Indian Territorial Force, or in other branches of Naval, Military or Air Force, be disqualified for being chosen as, or for being, a member of the Uttar Pradesh Legislative Assembly or Legislative Council.

Legislative changes :—The words (His Majesty's) between 'of' and Naval were omitted by A. O. 1950

U. P. LEGISLATURE [OFFICERS SALARIES] ACT, 1937

(U. P. ACT NO. V OF 1937.)

CONTENTS

Sections

1. Short title.
2. Salaries of officers of the Uttar

Sections

Pradesh Legislative Assembly.

[Assented by Governor on October 22, 1937, and published in Gazette dated October 30, 1937].

AN ACT

to provide for the salaries to be paid to officers of the Uttar Pradesh Legislature.

Whereas provision has been made in [Art. 186 of the Constitution of India] for fixing by Act of the State Legislature the salaries to be paid to its officers ;

It is hereby enacted as follows:

Prefatory Notes :—The Statement of Objects and Reasons is as follows :—“Section 66 (4) and (5) of the Government of India Act, 1935, provides that the salaries of the officers of the two Chambers of the Legislature shall be such as may be fixed by Act of the Provincial Legislature. It is intended to introduce this Bill in order to enable the Legislature to fulfil the purpose of that provision” - *Vide* U. P. Gazette dated August 21, 1937.

Legislative changes :—The words in brackets in the first para were substituted for the words 'sub-section.....Act, 1935' by A. O. 1950. The words (Uttar Pradesh) and (State) were substituted for the words 'United Provinces' and 'Provincial' by *ibid*.

1. Short title.—This Act may be called the Uttar Pradesh Legislature (Officer's Salaries) Act, 1937.

2. Salaries of officers of the Uttar Pradesh Legislative Assembly.—There shall be paid to the Speaker and Deputy Speaker chosen by the Uttar Pradesh Legislative Assembly a salary of [fifteen hundred] rupees a month and a salary of [six thousand] rupees a year respectively.

3. Salaries of officers of the Uttar Pradesh Legislative Council.—There shall be paid to the Chairman and [Deputy Chairman] chosen by the Uttar Pradesh Legislative Council a salary of [fifteen hundred rupees a month] and a salary of [six thousand] rupees a year respectively.

Legislative changes:—The words (Chairman) and (Deputy Chairman) were substituted for the words 'President' and 'Deputy President' by A. O. 1959 and the words (fifteen hundred rupees a month) and the words (six thousand) were substituted for the words 'six thousand rupees a year' and 'two thousand' by Act VII of 1946.

4. Free residence of Speaker.—The Speaker [and the Chairman each] shall further be entitled throughout the year to a free furnished house in Lucknow with grounds appurtenant thereto mentioned at the public expense, and to similar accommodation in any other place in which a session of the Uttar Pradesh [Legislature] may be held during, and for a period not exceeding, one week before and one week after the session.

Legislative changes:—The words (and the Chairman each) read with A. O. 1950 were inserted and the word (Legislative) was substituted for the words 'Legislative Assembly' by U. P. Act VII of 1946.

THE LOCAL AUTHORITIES LOANS (UTTAR PRADESH AMENDMENT) ACT, 1948

(U. P. ACT NO. XLVIII OF 1948)

CONTENTS

Sections	Sections
Preamble.	2. Amendment of Section 3 of Act IX of 1914.
1. Short title, extent and commencement.	

(Passed by the Uttar Pradesh Legislative Assembly on October 19, 1948, and by the Uttar Pradesh Legislative Council on November 5, 1948.)

[Received the assent of the Governor on December 29, 1948, under Section 75 of the Government of India Act, 1935, as adapted by the India (Provisional Constitution) Order, 1947, and was published in the Uttar Pradesh Government Gazette, dated January 8, 1949.]

AN ACT

further to amend the Local Authorities Loans Act, 1914, in its application to the Uttar Pradesh.

Preamble.—Whereas it is expedient to amend the Local Authorities Loans Act, 1914, in so far as it is applicable to the Uttar Pradesh for the purposes hereinafter appearing ;

It is hereby enacted as follows :

Prefatory Note:—For Statement of Objects and Reasons, see U. P. Gaz. Extra, dated 9th Oct. 1948.

Legislative changes:—The words (Uttar Pradesh) was substituted for the words 'United Provinces' by A. O. 1950 throughout the Act.

1. Short title, extent and commencement—(1) This Act may be called the Local Authorities Loans (Uttar Pradesh Amendment) Act, 1948.

(2) It extends to the whole of the Uttar Pradesh.

(3) It shall come into force at once.

2. Amendment of Section 3 of Act IX of 1914.—In clause (ii) of sub-section (1) of Section 3 of the Local Authorities Loans Act, 1914, for the full-stop after the word "scarcity" substitute a "comma" and add "floods, earthquake, or other general calamity".

THE UTTAR PRADESH LOCAL AUTHORITIES (PAYMENT OF CENSUS EXPENSES) ACT, 1950

(U. P. ACT No. XVIII OF 1950)

CONTENTS

Sections

1. Short title, extent and commencement.
2. Definitions.
3. Power to charge census expenses to local funds.

Sections

4. Numbers affixed on any house or other place under the Census Act, 1948, to be deemed to be affixed by local authority.
5. Powers to make rules.

Passed in Hindi by the Uttar Pradesh Legislative Assembly on March 26, 1950, and by the Uttar Pradesh Legislative Council on February 10, 1950.

Received the assent of the Governor on April 30, 1950, under Article 200 of the Constitution of India and was published in the Uttar Pradesh Gazette Extraordinary, dated May 2, 1950.

Authoritative English Text of the Uttar Pradesh Local Authorities (Jan-Ganana Samabandhi Vyaya dene ka) Act, 1950, published in the Uttar Pradesh Gazette Extraordinary, dated May 2, 1950.

AN ACT

to provide for payment by local authorities of expenses incurred in connexion with the taking of census.

Whereas it is expedient to confer power on the State Government to charge to a local fund the expenses incurred in connexion with the taking of census in the areas served by the local authority concerned ;

It is hereby enacted as follows :

Prefatory Notes :—The following extract from the Statement of Objects and Reasons may be usefully noticed :—

"The next census of India is due to take place in 1951. Preliminary work in this connection has already started and houses in all towns and villages have been numbered and house lists prepared. It is proposed that these numbers and house lists should be maintained permanently. Corrections would be made as and when desired but it is important that one house should have the same number whether it is for census or for purposes of assessment of municipal taxes or for any other purpose. The draft Bill is intended to provide for this. In the past municipalities and other local bodies have been contributing towards the expenses of the enumeration at the time of the census. The contribution is realized in view of the fact that census furnished data of importance to local bodies. The draft bill authorizes the Government to realize similar contributions from local bodies in the provinces from the next census. The power given to Government is, however, only permissive and it is not obligatory for Government to realize any contributions from local bodies. It is necessary however that the Provincial Government should have authority for realizing such contributions in case it is considered necessary that this should be done and the Bill provides for this. *Vide* U. P. Gazette dated January 21, 1951 (Part VII).

1. Short title, extent and commencement.—(1) This Act may be called the Uttar Pradesh Local Authorities (Payment of Census Expenses) Act, 1949.

(2) It extends to the whole of the Uttar Pradesh.

(3) It shall come into force at once.

2. Definitions.—In this Act, unless there is anything repugnant in the subject or context, “census” means a census held under and in accordance with the provisions of the Census Act, 1948.

3. Power to charge census expenses to local funds.—Notwithstanding anything in any enactment, rule, regulation or by-law in regard to municipal, notified area or district board funds, the State Government may, by general or special order, direct that the whole or any part of any expenses incurred, whether before or after the commencement of this Act, in connexion with the taking of census within the limits of any municipality, notified area or district board, may be charged to the funds of such municipality, notified area or district board, as the case may be.

4. Numbers affixed on any house or other place under the Census Act, 1948, to be deemed to be affixed by local authority.—Notwithstanding anything contained in any law, the numbers painted or affixed on any house, enclosure or other place under Section 9 of the Census Act, 1948, shall, in the case of any local authority or class of local authorities declared in that behalf by the State Government by notification in the *Gazette*, be deemed for purposes of any enactment relating to such local authority or class of local authorities to be numbers affixed or marked in pursuance of the provisions of the enactment applicable to them.

5. Powers to make rules.—The State Government may make rules for carrying out the purposes of this Act.

THE U. P. LOCAL BODIES (APPOINTMENT OF ADMINISTRATORS) ACT, 1953

(U. P. ACT No. XVII OF 1953)

CONTENTS

Sections

1. Short title, extent and commencement.

2. Definitions.

Sections

3. Appointment of Administrators.

4. Repeals.

(As passed by the U. P. Legislature)

AN ACT

to provide, with a view to facilitate the establishment of Corporation' for the appointment of Administrators for civil affairs in

KABAL TOWNS

Whereas the U. P. Local Bodies (Appointment of Administrators) Ordinance, 1953, was promulgated by the Governor to provide, with a view to facilitate the establishment of Corporation, for the appointment of Administrators for civic affairs in KABAL TOWNS.

And Whereas the said Ordinance has to be replaced by an Act of Legislature.

It is hereby enacted as follows :

Prefatory Note.—The Government has decided to set up Municipal Corporations in the Kabal Towns of Kanpur, Agra, Banaras, Allahabad and Lucknow and for that pur-

pose Government would, in due course, approach the Legislature for enactment of the necessary law providing for the constitution of Corporations. In the meantime, it is, however considered necessary, particularly with a view to speedy and smooth transition, that the work of all the local bodies which may ultimately be substituted by the Corporations should be co-ordinated and so shaped that the Corporations may start functioning at the earliest opportunity. Since the Legislature was not in session and it became necessary immediately to implement this decision, the Governor promulgated the U. P. Local Bodies (Appointment of Administrators) Ordinance, 1953. The present Bill provides for the re-enactment of the provisions of the Ordinance and also that until a Corporation is duly constituted the civic affairs of these TOWNS will be administered by the Administrator who will exercise all the powers and duties of the local body of which he is the Administrator and respective Boards/Trusts will cease to function.

I, therefore, introduce this Bill before the House." Vide Statement of Objects and Reasons published in U. P. Gazette Extraordinary dated July, 21, 1953.

1. Short title, extent and commencement.—(1) This Act may be called the U. P. Local Bodies (Appointment of Administrators) Act, 1953.

(2) It shall extend to Uttar Pradesh.

(3) It shall be deemed to have come into force on the eighth day of July, 1953.

Note:—The Act received the assent of the Governor on September 8, 1953 and the English translation of the Act was published in the U. P. Gazette Extraordinary dated September 10, 1953.

2. Definitions.—In this Act unless there is anything repugnant in the subject or context—

(1) "Board" means the Development Board and a Municipal Board;

(2) "Development Board" means the Kanpur (Urban Area) Development Board established under Section 5 of the Kanpur Urban Area Development Act, 1945;

(3) "KABAL TOWNS" means the towns of Kanpur, Agra, Banaras, Allahabad and Lucknow;

(4) "Local Body" means the Development Board, a Municipal Board or a Trust;

(5) "Municipal Board" means a Municipal Board established under Section 3 of the U. P. Municipalities Act, 1916, and includes a person or persons appointed under clause (b) of Section 31 of the said Act to exercise and perform the powers and duties of the Board; and

(6) "Trust" means a Trust established under Section 3 of the U. P. Town Improvement Act, 1919.

3. Appointment of Administrators.—(1) Notwithstanding anything contained in the U. P. Municipalities Act, 1916, the U. P. Town Improvement Act, 1919 or the Kanpur Urban Area Development Act, 1945, the State Government may with a view to facilitate the establishment of Corporations in KABAL TOWNS and insure smooth transition, by order published in the Gazette, appoint Administrators for any local body in any KABAL TOWN, and—

(a) declare that with effect from the date to be specified all powers, duties and functions of the local body, its President, Chairman or a Committee, thereof, whether under the said enactment or any other law, shall be vested in such Administrator and, shall, until the Order is superseded or repealed, be exercised, performed and discharged by or under the authority of the Administrator who shall be deemed in law to be the Board Trust, President, Chairman or Committee, as the occasion may require; and

- (b) make such incidental and consequential provisions including provisions for suspending any provisions of the said Acts as may appear to be necessary or desirable for this purpose :

Provided that the State Government may appoint one and the same person as Administrator for more than one local body in the same town.

- (2) Upon the publication of the Order under sub-section (1)
- (a) the Board or Trust constituted as such shall cease to function and all members of the Board or Trust including the Chairman, President, or any Committee thereof shall as the case may be, vacate their offices with effect from the date specified under clause (a) of sub-section (1) ;
- (b) where a President or Chairman has before his vacating the seat been granted any leave of absence and the period of leave has not expired, he may, notwithstanding that he may have vacated his seat, draw his leave salary for the remainder of the period.
- (3) In particular and without prejudice to the generality of clause (b) of sub-section (1), the State Government may by the same or subsequent Order provide—
- (a) that the Acts aforesaid shall, during such period as may be specified, have effect, in the area of the local body for which the Administrator had been appointed with such adaptations, alterations or modifications as may be necessary for giving effect to the provisions of clause (a) of the said sub-section ;
- (b) for the payment of the salary or allowances of the Administrator out of the local fund or funds concerned ; and
- (c) where the same person has been appointed Administrator for more than one local body in any town, that the posts or offices to be specified under any such local body or local bodies shall not be filled or they shall be filled up on a joint basis for all the local bodies and for the payment of the salary and allowances of the person so appointed out of the local fund or funds concerned.
- (4) Any order made under clause (b) of sub-section (1) or sub-section (3) shall have effect notwithstanding anything contained in the U. P. Municipalities Act, 1916, the U. P. Town Improvement Act, 1919, or the Kanpur Urban Area Development Act, 1945.

4. Repeals.—The U. P. Local Bodies (Appointment of Administrators) Ordinance, 1953 is hereby repealed and the provisions of Sections 6 and 24 of the U. P. General Act, 1904, shall apply as if it had been an Act repealed by an U. P. Act.

THE UTTAR PRADESH LOCAL RATES ACT, 1914

(U. P. Act No. I of 1914)

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8. Landlord's right in Oudh to recover local rate from under-proprietors, permanent lessees and persons holding free of rent in perpetuity.

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19. Repeal of Uttar Pradesh Act II of 1906.

As Amended and Adapted upto 1950

(Received the assent of the Lieutenant-Governor on the 20th December, 1913, and of the Governor-General on the 22nd February, 1914, and was published under Section 40 of the Indian Councils Act, 1861, on the 14th March, 1914).

AN ACT

to amend the law relating to the imposition of certain rates on land in the Uttar Pradesh and the employment of the proceeds thereof.

Whereas it is expedient to amend the law relating to the imposition of certain rates on land in the Uttar Pradesh and the employment of the proceeds thereof; It is hereby enacted as follows :

Prefatory Notes :—For Statement of Objects and Reasons, see Gazette, 1913, Pt. VII, p. 424 for discussion, see L. C. Pro. in *ibid*, pp. 490, 612, 664 and 690.

Legislative changes :—The words (Uttar Pradesh) and (State) were substituted for the words 'United Provinces' and 'Provincial' by A. O. 1950 throughout the Act.

CHAPTER I

Preliminary

1. Short title and extent.—This Act may be called the Uttar Pradesh Local Rates Act, 1914; and

(2) it extends to the whole of the territories * * * administered by the Governor of the Uttar Pradesh.

Legislative changes :—In sub-section (2) the words between 'territories' and 'administered' were omitted by A. O.

2. Definitions.—In this Act, unless there is anything repugnant in the subject or context,—

(1) "annual value" means—

(a) where the settlement of the land revenue is liable to periodical revision, double the amount of the land revenue for the time being assessed on an estate;

(b) where such settlement is not liable to periodical revision, or where the land revenue has been wholly or in part released, compounded for, redeemed or assigned, double the amount which, if the settlement were liable to periodical revision, or if there had been no such release, composition, redemption or assignment, would have been assessed as land revenue on the estate;

(2) "district board" and "district fund" mean respectively a board established, and a district fund formed, under the Uttar Pradesh District Boards Act, 1906 ;

(3) "estate" means any local area separately assessed to land revenue or separately exempted from payment thereof,

(4) "land" means land assessed to land revenue, and includes land of which the land revenue has been wholly or in part released, compounded for, redeemed or assigned ;

(5) "landlord" means the person responsible for the payment of the land revenue, if any, assessed on the estate, and includes a muafidar or other person holding land of which the land revenue has been wholly or in part released, compounded for, redeemed or assigned ;

(6) the words and expression "rent," "permanent tenure-holder," "fixed-rate tenant" and "tenant" have the meanings respectively assigned to them in the Agra Tenancy Act, 1901 ; and

(9) "year" means a year commencing on the first day of April.

Landlord.—The definition in the Act cannot be extended to superior proprietors¹.

CHAPTER II

Local Rates

3. Imposition of local rates.—(1) The district board of any district may, by notification in the official Gazette impose in any local area within the district not subject to the Banaras Permanent Settlement Regulation, 1795, a rate to be levied in respect of each estate within such local area and to be assessed at a prescribed amount, not exceeding 6·5 per cent. upon the annual value of the estate.

(2) The district board of any district may, in like manner, impose in any local area within the district subject to the Banaras Permanent Settlement Regulation, 1795, a rate to be levied in respect of each estate within such local area and to be assessed in either of the following ways :

- (a) at a prescribed uniform amount not exceeding two annas six pies per acre, upon the area under cultivation at, or within the three years immediately preceding the date of assessment ; or
- (b) at prescribed differential amounts per acre on the aforesaid area according to the nature or value of the crops grown on, or capable of being grown on, or according to the rent realised or capable of being realized from, the several portions of such area :

Provided that the rate to be assessed under clause (b) on any acre shall not exceed two annas six pies.

Legislative changes :—Section 3 was substituted by Section 109 of U. P. Act X of 1922. The words (Official Gazetteers) were substituted for the word 'Gazette' by A. O. 1937.

RATES UNDER SECTION 3

[*Vide, Notification No. 250/1—243, dated January 29, 1915.*]

In supersession of the notification in this department No. 1718, dated June 27, 1907, and in exercise of the powers conferred by Section 3 of the Uttar Pradesh Local Rates Act, 1914 (Uttar Pradesh Act 1 of 1914) the Lieutenant-Governor is pleased to impose on every estate in Agra and Oudh a rate of the following amount namely :—

(1) in Oudh (except in the district of Lucknow, Rae Bareilly and Bara Banki where the rates will be Rs. 4-12-0, Rs. 4-15-0 and Rs. 4-14-0 respectively) and in

1. *Pandit Bharat Raj v. Parshotam Dass*, 1948 A. L. J. 276 (P. C.)=I. L. R. 1948 A 500.

any part of the province of Agra not subject to the Banaras Permanent Settlement Regulation, 1795 (I of 1795), a rate of five per cent. per annum upon the annual value of the estate.

(2) in any part of the Province of Agra subject to the Banaras Permanent Settlement Regulation, 1795, except the upland tracts of the Mirzapur District, a rate of two annas per acre upon the area under cultivation at, or within the three years immediately preceding the date of assessment;

(3) in the upland tracts of the Mirzapur District at the following differential amounts per acre on the aforesaid area, namely:

- (i) two annas per acre where the land pays, or is capable of paying, an annual rent of two rupees per acre;
- (ii) one anna per acre, where the land pays, or is capable of paying, an annual rent of less than two rupees but more than twelve annas per acre:

Provided that land paying, or capable of paying an annual rent of not more than twelve annas per acre, and land, intermittently cultivated (by which is to be understood land which is cropped not more than once in three years) shall be exempt from payment.

Notification No. 2510/1—243, Dec. 10, 1915, in U. P. Gazette 1915, Pt. I, p. 2423, imposed on every estate in the district of Lucknow a rate of five per cent. per annum upon the annual value of the estate.

4. Liability of landlord to pay local rates.—The rate imposed under Section 3 shall be called the local rate and shall be paid by the landlord independently of, and in addition to, any land revenue for the time being assessed on the estate and any cess now levied on account of roads.

5. Credit of local rates.—The proceeds of the local rates imposed in each district shall be credited to the district fund.

CHAPTER III

Recovery of rates and reliefs relating thereto

6. Recovery of rates.—All sums due on account of any local rate shall be recoverable as if they were arrears of land revenue due in respect of the estate on which the rate is imposed.

7. Landlord's right to recover local rate from tenants in permanently settled areas.—The local rate imposed under sub-section (2) of Section 3 shall be recoverable by the landlord—

- (1) from a permanent tenure-holder, fixed rate tenant or tenant holding rent-free, to the extent of the whole amount paid on account of the land held by him; and
- (2) from any other tenant to the extent of one-half of such amount.

8. Landlord's right in Oudh to recover local rate from under-proprietors, permanent lessees and persons holding free of rent in perpetuity.—Where a local rate is imposed in Oudh under sub-section (1) of Section 3 on any estate, the landlord may recover the rate from an under-proprietor or a permanent lessee of land within the estate whose rent has been fixed or recorded by a competent court, or from a person who holds land comprised in the estate free of rent in perpetuity, to the following extent, namely, from such under-proprietor or lessee a sum bearing the same proportion to a sum calculated at 2·5 per cent. on the annual value of the land held by him as such annual value after deduction therefrom of the rent so fixed or recorded bears to half such annual value, and from such person a sum equal to 2·5 per cent. on the annual value of the land held by him, and

- (a) if at the date of the commencement of this Act the rural police rate payable under the Uttar Pradesh Local and

Rural Police Rates Act, 1906, in respect of such land was wholly recoverable from such under-proprietor, permanent lessee or person,

then from such under-proprietor, permanent lessee or person the whole of the difference between a sum calculated on such annual value at 2·5 per cent. and a sum calculated thereon at the percentage leviable as local rate in respect of the estate, and

(b) if at such date rural police rate was partially recoverable from such under-proprietor, permanent lessee or person,

then from such under-proprietor, or permanent lessee a sum bearing the aforesaid proportion to such difference and from such person the whole of such difference.

Explanation.—In this section the annual value of any land comprised in an estate means double the land revenue paid by the superior proprietor on account of the land in question.

Scope.—Where there is an agreement of the year 1885 between the superior proprietor and the under-proprietor by which the latter is liable for the salaries of the Patwari and Choukidar in the village clause (a) comes into operation². The first part of the section is joined to clause (a) of the section by the word 'and' which shows that when clause (a) applies the rates payable under that clause are to be paid in addition to the rate payable under the first part of that section.³

Contract.—As used in the section must mean a contract between the landlord and under-proprietor or permanent lessee as the case may, and further, it must mean a contract in its legal sense⁴.

9. Landlord's right to recover contribution for local rate from co-sharer.—A landlord who has paid on behalf of a co-sharer any sum due from such co-sharer on account of the local rate may recover such sum from such co-sharer.

10. Modes of recovery in certain cases.—(1) Any sum recoverable by a landlord from an under-proprietor or lessee under Section 8, or from a co-sharer under Section 9, may be recovered by suit as hereinafter provided.

(2) In case in which the provisions of Section 185 or Section 184 of the Uttar Pradesh Land Revenue Act, 1901, apply to the recovery of arrears of rent due from such under-proprietor or lessee or to the recovery of a payment made on account of revenue due from such co-sharer, the landlord instead of suing, recover such sum in the manner permitted by those provisions as if the sum were an arrear of rent or had been paid on account of revenue, as the case may be.

11. Compensation for illegal exaction of rate.—(1) Where any sum is exacted as being due on account of any local rate imposed under Section 3 from any person of the class from which such rate is declared by Section 7 or Section 8 to be recoverable, then—

(a) if such sum was not recoverable under either of the sections last mentioned, the amount of such sum, and

(b) if such sum, whether it was or was not so recoverable, was obtained by coercion or fraud, such compensation, not exceeding two hundred rupees, as the court thinks fit to decree,

may be recovered by such person from the person who exacted such sum.

2. *Har Narain Das v. Gajraj Singh*, 7 OWN 431=1930 O 219.

3. *Ibid.*

4. *Ali Abbas v. Sher Bahadur Singh*, 1925 O 264.

(2) An award of compensation under sub-section (1) shall not affect any punishment to which the person who exacted the sum may be liable under the Indian Penal Code.

12. Suits as to rates.—Suits for the recovery of sums on account of any local rate, and suits on account of illegal exaction of any rate, shall be entertained, heard and determined as if they were suits of the nature contemplated—

(1) in the case of local rates in Agra, by Section 159 or Section 160, Section 102 and Section 36 or Section 103, as the case may be, of the Agra Tenancy Act, 1901; and

(2) in the case of local rates in Oudh, by clause (2), clause (9), sub-head (a), and clause (16) of Section 108 of the Oudh Rent Act, 1886; and all matters of jurisdiction, limitation and procedure shall be regulated, so far as may be, by Chapters XII to XIV and by Chapters VIII to X of the said Act respectively.

13. Appeal.—(1) Any person aggrieved by an order purporting to be made hereunder in any matter relating to the assessment of any local rate may, within a period of sixty days from the date of such order, appeal from such order to the Commissioner, whose decision shall be final and conclusive.

(2) Notwithstanding anything in sub-section (1), the State Government may, of its own motion or upon the application of any such person as aforesaid, call for the record of any proceeding in which an order of the nature referred to in sub-section (1) has been made, and make thereon such order as justice and the circumstances of the case may require.

(3) The provisions of the Indian Limitation Act, 1908, relating to the exclusion of time in computing the period for presenting an appeal shall apply to appeals under this section.

Legislative changes :—The words in brackets in sub-section (2) were substituted for the words 'Board of Revenue' by Section 2 and the Schedule of U. P. Act XII of 1922, read with A. O.

14. Bar of jurisdiction of civil courts.—A suit shall not lie in any civil court to set aside or modify any assessment of a rate imposed under this Act.

CHAPTER IV

Supplemental Provisions

15. Subsidiary powers of State Government.—The State Government may, by Notification in the Official Gazette—

(a) exempt any estate or class of estates from assessment to, or payment of, the whole or any portion of the local rate payable in respect thereof;

(b) prescribe by what instalments and at what times any rate imposed under this Act, shall be payable and by whom it shall be assessed and collected;

(c) direct a revision of the assessment of the local rate imposed under [sub-section (2)] of Section 3;

(d) direct the making of fresh measurements for the purpose of such revision;

(e) make rules to carry out the purposes of this Act.

Legislative changes :—In the first para the words in brackets were substituted for the words 'Local Government' by A. O. In clause (c) the words in brackets were substituted for the words "clause (a)" by Section 2 of U. P. Act IV of 1917.

Exemption from rates under Section 15, clause (a).

[*Vide, Notification No. 252/1—243, dated January 29, 1915.*]

In supersession of the Notification in this department No. 3572, dated November 8, 1906, and in exercise of powers conferred by Section 15 clause (a) of the Uttar Pradesh Local Rates Act, 1914 (Uttar Pradesh Act I of 1914) the Lieutenant-Governor is pleased to exempt the following revenue-free estates from liability to the local rate imposed by the notification in the department No. 250/1—1243 of this date namely :

(a) in areas in which a rate is imposed under Section 3, sub-section (2) every revenue-free estate which is an endowment, or part of an endowment, for any religious purpose and the assessable area of which does not exceed eighty-acres.

(b) in areas in which a rate is imposed under Section 3, sub-section (1) every revenue-free estate—

(i) the annual value of which is less than twenty rupees, or

(ii) which is an endowment, or part of an endowment, for any religious purpose and the annual value of which does not exceed two hundred rupees :

Provided that in case of the estates described in clause (a) and in clause (b) sub-head (ii), the profits of the estates are expended in good faith on the objects of the endowment.

[*Vide Notification No. 254/1—243, dated January 29, 1915.*]

In supersession of Notification No. 3574, dated November 8, 1906, and No. 1576, dated June 15, 1907, and in exercise of the power conferred under Section 15 clause (a) of the Uttar Pradesh Local Rates Act I of 1914 (Uttar Pradesh Act I of 1914) the Lieutenant-Governor is pleased to exempt from the operation of the said Act all estates situated within the following local area :

The Kumaun Bhabar and Chilkia Ilaga and the parganas of Bazpur, Gadarpur (excluding the villages of Rajpura, Kankatta and Kua Khera) Kichha (excluding the villages of Daran, Biron Nagla and Anjanai), Kilpuri and Bilheri in the Naini Tal District.

Notification No. 941/1—694, May 23, 1916, in U. P. Gazette 1916, Pt. I. p. 883 exempted the Ubari estates of Rampura, Jagammanpura and Gopalpura in the Jalaun district from the payment of the local rates imposed under the Act ; and No. 1747/1—405, December 9, 1918, in the U. P. Gazette 1918, Pt. I, p. 1462, declared that the University of Allahabad is exempted from the payment of the local rates of the lands occupied by the University Law Hostels in Allahabad.

16. Amendment of Act XVII of 1878, Section 17.—Clauses (a) and (b) of Section 17 of the Northern India Ferries Act, 1878, shall, in their application to the Uttar Pradesh, be read as if the following clause were substituted therefor, namely—

“(ab) In the territories for the time being administered by the Lieutenant-Governor of the Uttar Pradesh of Oudh such tolls, rents, compensations and fines shall be credited to the [State Government] and applied first to defraying all charges incurred in carrying out this Act, in those territories, and then to assisting, in such manner as the [State Government] may direct, the district fund of any district in which, or on the borders of which, any ferry is situate.”

17. Release of under-proprietors and permanent lessees from liability to maintain rural police.—From the commencement of this Act an under-proprietor or permanent lessee shall not be liable to pay any sum on account of the maintenance of the rural police, notwithstanding anything contained in any decree of a court whereby any liability, general or specific, is imposed on him in respect of such maintenance.

18. Retrospective effect of certain sections for the purpose of validating things done.—Section 3 and clause (a) of Section 15 of this Act shall, so far as may be necessary to validate anything done or purporting to be done under the Uttar Pradesh Local and Rural Police Rates Act, 1906, by the State Government or by any officer of Govern-

ment, be deemed to have had effect as if they had been in force from the date of the commencement of that Act.

19. Repeal of Uttar Pradesh Act II of 1906.—The Uttar Pradesh Local and Rural Police Rates Act, 1906, is hereby repealed.

RULES MADE UNDER THE U. P. LOCAL RATES ACT I OF 1914

Revenue Department, No. 3668/I-228B (10-39), dated February 9, 1944 published in the U. P. Gazette, dated February 12, 1944, Part I-A, pp. 29-32.

In continuation of notification No. 1998/1—228B (10)-39, dated September 28, 1943, and in exercise of the powers conferred by clause (e) of Section 15 of the Uttar Pradesh Local Rates Act, 1914 (U. P. Act I of 1914), and in supersession of all previous notifications, rules and orders on the subject the Governor is pleased to make the rules hereinafter set forth below :

CHAPTER XII (REVENUE MANUAL)

LOCAL RATES UNDER ACT I OF 1914

Assessment and Accounts

286. In the rules in this Chapter the word “Act” means the Uttar Pradesh Local Rates Act (I of 1914) as amended up to date, the word “Estate” means, as defined in that Act, “any local area separately assessed to land revenue or separately exempted from payment thereof”; and the term ‘annual value’ means, as defined in that Act—

- (a) where the settlement of the land revenue is liable to periodical revision, double the amount of the land revenue for the time being assessed on an estate ;
- (b) where such settlement is not liable to periodical revision, or where the land revenue has been wholly or in part released, compounded for, redeemed or assigned, double the amount which, if the settlement were liable to periodical revision, or if there had been no such release, composition, redemption or assignment, would have been assessed as land revenue on the estate.

A—General rules regarding assessment

286-A. Under Section 3 of the Act corresponding to Section 109 of the U. P. District Boards Act, 1922 (U. P. Act X of 1922) read with Section 108 (a) of the same Act, local rates may be imposed by district boards with the previous sanction of the State Government. These rates can be imposed in the areas not subject to the Banaras Permanent Settlement Regulation, 1795 (I of 1795), under sub-section (1) of Section 3 of the Act and, in the areas subject to that Regulation, under sub-section (2) of Section 3 of the Act. Until rates are so imposed by the district boards, the following rates imposed by the State Government under Notification No. 250/I—243, dated January 29, 1915 (as subsequently amended by Notification No. 2510/I—243, dated December 10, 1915), shall, subject to such orders as might have been or may be passed by the State Government from time to time in respect of the imposition of special rates in individual districts, continue in force under Section 110 of the U. P. District Boards Act, 1922 (U. P. Act X of 1922) :

(1) in Oudh and in that part of the province of Agra which is not subject to the Banaras Permanent Settlement Regulation, a rate of 6 per

cent. per annum upon the annual value of the estate or in other words, 10 per cent. of the land revenue for the time being assessed thereon ;

(2) in that part of the province of Agra which is subject to the Banaras Permanent Settlement Regulation, 1795, except the upland tracts of the Mirzapur District a rate of two annas per acre upon the area under cultivation at, or within the three years immediately preceding the date of assessment ;

(3) in the upland tracts of the Mirzapur District at the following varying amounts per acre on the area defined in sub-paragraph (2), namely :

- (a) two annas per acre where the land pays, or is capable of paying, an annual rent of two rupees or more per acre ;
- (b) one anna per acre, where the land pays, or is capable of paying an annual rent of less than two rupees but more than twelve annas per acre :

Provided that land paying, or capable of paying, an annual rent of twelve annas or less per acre, and land intermittently cultivated (by which is to be understood land which is cropped not more than once in three years) shall be exempt from payment.

287. The following revenue-free estates have been exempted under Section 15 (a) of the Act by the State Government under Notification No. 252/I—2-3, dated January 29, 1915 from liability to the local rate imposed by Notification No. 250/I—243, dated January 29, 1915, namely :

- (a) in areas in which a rate is imposed under sub-section (2) of Section 3 of the Act, every revenue-free estate which is an endowment, or part of an endowment, for any religious purpose, and the assessable area of which does not exceed eighty acres ;
- (b) in areas in which a rate is imposed under sub-section (1) of Section 3 of the Act, every revenue-free estate—
 - (i) the annual value of which is less than Rs. 20, or
 - (ii) which is an endowment or part of an endowment, for any religious purpose and the annual value of which does not exceed two hundred rupees :

Provided that in the case of the estates described in clauses (a) and (b) (ii) of this rule, the profits of the estates are expended in good faith on the objects of the endowment.

287-A. All estates situated within the following local areas have also been exempted under Section 15 (a) of the Act by the State Government from the operation of the Act :

The Kumaun Bhabar and Chilikia Ilaqa and the parganas of Bazpur, Gadarpur (excluding the villages of Rajpura, Kankatta, and Kua Khera), Kichha (excluding the villages, of Daran, Biron, Nagla and Anjanai), Kilpuri and Bilheri in the Naini Tal District.

288. (1) The rates imposed under paragraph 286-A above may be assessed by the Settlement Officer at the time of settlement, but where this has not been done, the Collector shall make the assessment.

(2) In the case of a local rate imposed in the permanently settled areas in Agra under Section 3 (2) of the Act, the assessment of which has been revised under Section 15 (c) of the Act, the Collector shall report to the State Government through the Commissioner one year before the expiry of the term of revisions whether a revision is again necessary or not, giving reasons for his opinion.

Notes : (1)—The current assessment of local rates expires—

In Mirzapur upland tracts .. ..	.. On June 30, 1946.
In Ghazipur .. ..	.. On September 30, 1944.
In Mirzapur (Gangetic Valley) ..	.. On June 30, 1947.
In Ballia .. ..	.. On June 30, 1945.
In Banaras .. ..	.. On June 30, 1946.
In Jaunpur .. ..	.. On June 30, 1947.
In Azamgarh Pargana Nathupur ..	.. On June 30, 1948.
Other parganas .. ..	.. When the temporary settlement of the pargana expires.

(2) For assessment and recovery of local rates in pargana Kaswar Raja in Banaras District see rules made under Section 13 of the Banaras Family Domains Act, 1904, and published in Government Notification No. 71-36/-IA—212, dated 5th October, 1923.

289. (1) (a) The rates imposed under sub-section (1) of Section 3 of the Act, both in Oudh and in the temporarily settled areas in Agra, shall be payable by the landlords in two instalments, one with the first instalment of the *rabi qist* of land revenue, and the second with the first instalment of the *kharif qist*.

(b) These instalments shall bear the same proportion to the annual demand for the rate that the whole *rabi* and *kharif* instalments of land revenue bear to the total land revenue demand for the year.

(2) The rates imposed under sub-section (2) of Section 3 of the Act in permanently settled areas in Agra shall be payable by the landlords in two equal instalments with the first *rabi* and the first *kharif qist* of land revenue.

(3) The instalments in which rates payable under Sections 7 and 8 of the Act by tenants, under-proprietors, or permanent lessees are to be recovered, shall be the same as the instalments payable by proprietors.

B—Revision of assessment in permanently settled areas other than upland tracts of Mirzapur

290. (1) When, upon a report made under paragraph 288 (2) or otherwise, a revision of assessment of the local rate imposed under Section 3 (2) of the Act has been directed by the State Government under Section 15 (c) of the Act, the Collector shall have a statement compiled by the Patwari from the Khatauni for each mahal showing the following details :

(a) Area of the following classes under heads I to II inclusive of the Khatauni :

- (i) cultivated ;
- (ii) land prepared for sugarcane ;
- (iii) new fallow (included in holdings) ;
- (iv) other uncultivated land ;
- (v) total of (i) to (iv).

(b) New fallow under head 14 (i) of the Khatauni.

(c) Total of (a) (i), (a) (ii), (a) (iii) and (b).

Note.—The practice with regard to the entry of uncultivated land in the Khatauni varies. Where details of such land are shown, the whole statement can be compiled from the Khatauni direct. Where details are not shown, it is unnecessary to alter the practice in ordinary years but if orders for the revision of the rates received in time, the

Collector should direct the details to be shown in the Khatauni of the year on which the assessment is to be based. When not contained in the Khatauni, the details must be ascertained from the Khasra.

(2) The statement shall be prepared under the supervision of the Kanungo as follows :

(a) The entry in column (a) (v) shall be compared with the corresponding entry in the statement of holdings and rentals already filed.

(b) A village statement shall be made out as follows :

Mahal	Cultivated (a) (i)	Land prepared for sugarcane (a) (ii)	New fallow (a) (iii), (b)
Village Total ..			

The village totals shall be compared with the corresponding entries in the area statement.

(3) Provided there is budget provision to meet the cost the Collector may, for the purpose of this check, appoint one additional assistant registrar kanungo for a period not exceeding one month in any tahsil.

291. (1) An assessment statement shall be prepared in the following form :

- | | |
|---|---|
| (1) Name of pargana. | (2) Name of mauza. |
| (3) Name of mahal | (4) Total area assessed at last revision. |
| (5) Total rate assessed at last revision. | (6) Total area now assessable. |
| (7) Total rate proposed | (8) Increase in area assessable. |
| (9) Decrease in area assessable. | (10) Increase in rate. |
| (11) Decrease in rate. | (12) Remarks explanatory of any decrease. |

(2) Assessable area means the area shown in column (c) of the statement prescribed by paragraph 290 (1).

(3) The Collector or an Assistant Collector shall compare the area assessable in each mahal with the area assessed at last revision, and the village totals [paragraph 290 (2) (b)] with the entries of previous years as contained in the mauza register, and if in either case there is a marked decrease, shall enquire the cause and satisfy himself of the accuracy of the figures on which the assessment is based.

292. (1) Information of the amount assessed on each estate shall be communicated by written orders to the Lambardars in form I, intimating the amount of rate and giving notice that any objection to the assessment which they may desire to make should be lodged within 15 days of receipt of the notice. Any objection filed by the proprietors shall be heard and disposed of by the Collector.

(2) The Collector shall submit to the State Government through the Commissioner a report showing the amounts and term of assessment proposed and giving brief explanations of any increase or decrease. This report should reach Government before the commencement of the agricultural year from which the assessment is to take effect.

C.—Revision of assessment in upland tracts of Mirzapur

293. (1) When, upon a report made under paragraph 288 (2), or otherwise, a revision of assessment of local rate imposed under Section 3 (2) of the Act has been directed by the State Government under Section 15 (c) of the Act, the land shall, for the purpose of assessment of the differential rates imposed by Notification No. 250/I—243, dated January 29, 1915, be classified as follows :

Class I—Land paying, or capable of paying, a rent of Rs. 2 or over per acre, on which the rent to be assessed per acre is 2 annas.

Class II—Land paying, or capable of paying, a rent of less than Rs. 2 but more than 12 annas per acre, on which the rate to be assessed per acre is 1 anna.

Class III—Land paying, or capable of paying, a rent of 12 annas or less per acre, and land cultivated intermittently, which is exempt from the rate.

(2) Land not paying a separate cash rent on each field shall be classified for the purposes specified in sub-rule (1) above according to the crops ordinarily grown on it as follows :

<i>Class I</i> Land ordinarily growing	<i>Class II</i> Land ordinarily growing	<i>Class III</i> Land ordinarily growing
Wheat ..	.. Barley ..	Urd and mung.
Wheat and gram	.. Barley and gram..	Moth.
Wheat and barley	.. Peas ..	..
Gram ..	.. Masur ..	..
Garden crops	.. Alsi ..	..
Opium ..	.. Miscellaneous (<i>rabi</i>)	<i>San.</i>
Tobacco ..	..	..
Sarson ..	.. Juar ..	..
Masala ..	.. Bajra ..	..
Dhan ..	.. Arhar ..	Miscellaneous (<i>kharif</i>)
Sugarcane	.. Juar and arhar ..	..
..	Bajra and arhar ..	..
..	Maize ..	..
..	Mandua ..	..
..	Kondon ..	..
..	Sanwan ..	..
..	Cotton ..	..
..	Cotton and arhar..	..
..	Til ..	..

(3) Each tappa shall be divided into groups of villages possessing the same characteristics, and a separate crop classification shall be framed for each group with due regard to its special conditions.

294. (1) The assessment shall be effected as follows :

(a) in the case of land paying a separate cash rent on such field, it shall be assessed with reference to such rent.

(b) in the case of land included in a holding paying a lump rent, or of *sir*, or *khudkashi*, grain-rented, or rent-free land—

(i) if canal irrigated, it shall be assessed as land of class I ;

(ii) if not canal irrigated, it shall be assessed on a consideration of the crops grown on such land.

(2) The assessments shall be based on the last Jinswar khasra prepared before the revision of assessment, with such reference to pre-

vious Khasras as may be necessary. Fallow land which has been cultivated within the period of 3 years immediately preceding the revision, shall also be assessed and classified with reference to previous Khasras, provided that it is capable of paying a rent of more than 12 annas per acre, and has not been cultivated intermittently.

294-A. The Collector shall submit to the State Government through the Commissioner a report showing the amounts and term of assessment proposed, and giving brief explanations of any increase or decrease. This report should reach the State Government before the commencement of the agricultural year from which the assessment is to take effect.

D—Accounts

295. The demand and collections on account of rates and cesses are amalgamated in the *kh-tauni* with the demand and collections of land revenue. The lump collections shall be distributed in the manner prescribed in Chapter IV. The collections of rates and cesses are entered with those of land revenue in the annual *tauzi*. The only statement that is required separately for rates and cesses is the demand statement.

296. The demand statement shall show the demand for rates and cesses on the roll, and shall be prepared in form II (R. D. form No. 78) for permanently settled areas, and in form III (R. D. form No. 77) for temporarily settled areas, and submitted to the Commissioner along with the statement of land revenue on the roll [paragraph 118 (1)].

297. The following rules shall be observed in preparing the demand statement (form III) in temporarily settled areas :

(1) Estates shall be classified as follows :

- (i) Estates paying full revenue.
- (ii) *Nazrana*, quit-rent, and *ubari* estate.
- (iii) Grant estates paying progressive Jamas.
- (iv) Revenue-free estates, including estates the revenue of which has been redeemed.
- (v) Waste land estates purchased in fee-simple.
- (vi) Other estates not specified above.

(2) Under all classes, fractions of an anna should be excluded from the demand, and the amount of variation resulting from this cause should be shown distinctly.

(3) In the case of estates under clause (i), the demand to be entered in column 6 should be the full rate on the land revenue shown in column 2.

The only legitimate causes of variations are :

First.—Exemptions specially sanctioned by the State Government,

Second.—Fractions of an anna.

The amount of variation from the full rate due to these causes shall be separately shown in an accompanying letter, in which the number and date of the Government order sanctioning an exemption shall invariably be given.

(4) In the case of estates under class (ii), the actual land revenue demand, *i. e.* exclusive of the alienated portion, should be entered in column 2.

(5) In the case of estates under class (iii), the land revenue demand for the year should be entered in column 2 and the amount of rate imposed on it in column 6.

(6) In the case of estates under class (iv), the full estimated amount of land revenue alienated should be shown in column 3, irrespective of the question whether the full rate is actually levied or not. A detailed explanation of any variation between the full rate, calculated on the full alienated revenue and the rate actually demanded by the Collector, must be given. A list of estates exempted from the rate under paragraph 287, and of the rate lost in each instance through such exemption shall be furnished separately to the State Government. Only the total loss by such exemptions need be given in the demand statement.

(7) In the case of estates under class (v), the rates shall be calculated on the annual value.

(8) In the case of other estates falling under class (vi), the same principles as above will be observed as far as practicable, column 2 showing what is actually demanded, column 3 the difference required to make up the estimated jama at 40 per cent. of the assets, and column 4 the estimated jama at the same rate.

298. The Commissioner shall verify the entries in the demand statements and forward them to the State Government.

FORM I

[Paragraph 292 (1) of the Revenue Manual]

To

_____ son of _____
 _____ lambardar of _____

Take notice that under clause (2) of Section 3 of the Uttar Pradesh Local Rates Act, 1914 (Uttar Pradesh Act I of 1914), you are required to pay to the State Government on account of the local rate, with the first *kharif* and *rabi* instalments of land revenue in each year, one-half at each of such instalments the sum of Rs. _____, being the amount calculated at the rate of 2 annas per acre on the area [_____] which is now under cultivation or which within the period of three years immediately preceding has been cultivated in the estate (*mahal*) named below. No objection to the assessment will be entertained unless lodged with the Collector within 15 days from the receipt of this notice.

Name of estate (*mahal*) _____

FORM II

(Paragraph 296 of Revenue Manual).

Statement showing the demand of acreage rate receipts from surrendered jagirs and road cess in the district for the revenue year 19 -19.

Description of rate or cess	Demand on the 1st October, 19	Demand on the 1st October, 19	Increase	Decrease	Remarks: Here quote the authority sanctioning alterations of the demand.
1	2	3	4	5	6
Acreage rate ..					
Receipt from surrendered jagirs ..					
Road cess ..					

Certified that the entries in the statement have been verified in this office and found correct.

R. D. form No. 78.

Commissioner.

FORM III

(Paragraph 266 of the Revenue Manual)

Statement showing the demand on account of the land rate in the _____
District for the revenue year 19. 19

Class of estate	Land revenue assessed and demanded	Additional land revenue which would be demanded but for non-liability, release, composition, redemption, or assignment	Total of columns 2 and 3	Full rate calculated on sum shown in column 4	Actual demand of rate	Difference of column 6 from column 5		Remarks explanatory of column 7
						Excess	Deficiency	
1	2	3	4	5	6	7		8
1. Estate paying full revenue.								
2. <i>Nazruna</i> quit-rent, and <i>ubari</i> estates.								
3. Grant estates paying progressive jamas.								
4. Revenue-free estates, including lands the revenue of which has been redeemed.								
5. Waste land estates purchased in fee simple.								
6. Other estates not specified above.								

Certified that the entries in the statement have been verified in this office and found correct.

R. D. form No. 77.

Commissioner.

THE UTTAR PRADESH LOCUSTS DESTRUCTION ACT, 1951

(U. P. ACT No. XX OF 1951)

CONTENTS

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Authoritative English text of the Uttar Pradesh Tiddi Vinash Adhiniyam, 1951

AN ACT
to provide for the destruction of locusts

Whereas it is expedient to make provision for the destruction of locusts;

It is hereby enacted as follows :

Prefatory Note.—For Statement of Objects and Reasons, please see Uttar Pradesh Gazette (Extraordinary) dated August 20, 1951.

Passed in Hindi by the Uttar Pradesh Legislative Assembly on August 29, 1951, and by the Uttar Pradesh Legislative Council on September 10, 1951.

Received the assent of the Governor on September 25, 1951, under Article 200 of the Constitution of India and was published in the Uttar Pradesh Gazette Extraordinary, dated September 28, 1951.

Published in the Uttar Pradesh Gazette Extraordinary, dated September 28, 1951.

1. Short title, extent and commencement.—(1) This Act may be called the U. P. Locusts Destruction Act, 1951.

(2) It extends to the whole of Uttar Pradesh.

(3) It shall be deemed to have come into force on the ninth day of July, 1951.

2. Definitions.—In this Act, unless there is anything repugnant in the subject or context—

(i) "District Magistrate" includes any officer authorized by the District Magistrate to perform the functions of a District Magistrate under this Act.

(ii) "Inspector" means any person appointed by the District Magistrate to perform the functions of an Inspector under this Act in any local area ;

(iii) "Occupier" means the person having for the time being the right of occupation of any land or premises or his authorized agent or any person in actual occupation of the land or premises and Inspector under this Act in any local area.

3. Measures for destruction.—Whenever it appears to the District Magistrate that any area in his district is being invaded, or is in danger of an invasion, by locusts, he may—

(i) direct every occupier within any area in the district to carry out such measures as the District Magistrate may deem fit in order to eradicate and destroy the locusts and to prevent their spread or reappearance ;

(ii) call upon any male person not below the age of 18 years resident in the area to render all possible assistance in carrying out the measures referred to in clause (i) for the destruction of locusts :

Provided that no person who is by virtue of old age or any physical disability incapable of rendering assistance or who lives at a distance of more than 5 miles from the place where his presence is required shall be called upon to render such assistance ;

(iii) specify the area within which and the period during which the measures specified in clause (i) are to be carried out.

4. Power of Inspector to enter upon any land or premises.

—Any Inspector may, after giving notice, enter upon any land or premises situated in the area specified under clause (iii) of Section 3 within his local jurisdiction for the purpose of ascertaining whether the measures specified in clause (i) of Section 3 are being carried out.

5. Power to carry out the measures.—If on the inspection of any land or premises under Section 4, the Inspector finds that the measures specified in Section 3 have not been carried out, the Inspector may, subject to any special or general orders of the District Magistrate, carry out at the expense of the occupier the measures referred to in Section 3.

6. Appeal against costs.—(1) Any such occupier may, within thirty days from the date of the first demand of such costs from him, prefer an appeal to the Sub-Divisional Officer having jurisdiction on the grounds that—

- (i) the costs include charges for items other than the cost of labour, material or use of implements ; or
- (ii) the charges for labour or material or use of implements are unreasonably high.

(2) On receipt of the appeal under sub-section (1) the Sub-Divisional Officer shall, after giving the occupier an opportunity of being heard, pass such order thereon as he thinks fit.

(3) An order passed under sub-section (2) shall be final and conclusive and shall not be liable to be called in question in any court.

7. Failure to carry out directions or render assistance.—

(1) Upon the report of the Inspector, the District Magistrate may, if he is satisfied that—

- (a) an occupier failed to comply with any directions issued under Section 3, or
- (b) any person failed to render assistance required of him under Section 3.

Order such occupier or person to pay a penalty not exceeding Rs. 15.

(2) The order requiring payment of penalty under sub-section (1) shall be final and conclusive and be not questioned in any court.

(3) The penalty under sub-section (1) shall be recoverable as arrear of land revenue.

8. Mode of notice.—It shall not be necessary to notify every occupier under clause (i) of Section 3 or other persons whose assistance is required under clause (ii) of Section 3, and a proclamation by beat of drums or other customary mode in the area, village or locality shall be deemed sufficient notice to all affected persons residing in that area, village or locality.

9. Bar to suits or other legal proceedings.—No suit, prosecution or other legal proceedings shall lie against the State Government or any officer in respect of anything in good faith done or intended to be done under this Act, or for any damage to property caused by any action taken in good faith in carrying out the provisions of this Act.

10. Repeal.—The U. P. Locusts Destruction Ordinance, 1951 is hereby repealed and the provisions of Sections 6 and 24 of the U. P. General Clauses Act, 1904, shall apply to it as if it had been an Act repealed by an Uttar Pradesh Act.

11. Rules.—The State Government may make rules for the purpose of carrying into effect the provisions of this Act.

THE LUCKNOW UNIVERSITY ACT, 1920

(U. P. ACT NO. V OF 1920)

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As Amended and Adapted upto 1950.

(Received the assent of the Lieutenant-Governor on the 1st November, 1920, and of the Governor-General on the 25th November, 1920, and was published under Section 81 of the Government of India Act on the 11th December, 1920.)

AN ACT

To establish and incorporate a unitary teaching and residential University at Lucknow.

Whereas it is expedient to establish and incorporate a unitary teaching and residential University at Lucknow; It is hereby enacted as follows :

Prefatory Note.—For Statement of Objects and Reasons, see Uttar Pradesh Gazette 1920, Part VII, p. 740; for R. S. Com., see *ibid.*, p. 1015; for discussion, see L. C. Pro. in *ibid.*, pp. 792, 1122 and 1226.

Legislative changes:—The words (Uttar Pradesh) and (State) were substituted for the words 'United Provinces' and 'Provinces' by A. O. 1950 throughout the Act.

1. Short title and commencement.—(1) This Act may be called the Lucknow University Act, 1920.

(2) It shall come into force on such date as the State Government may by Notification in the official Gazette direct.

Note.—The Act came into force on Dec. 2, 1920, vide Not. No. 2781/XV, d. Dec. 16, 1920, in Gaz., 1920, Pt. I, p. 1998.

2. Definitions.—In this Act, and in all Statutes made hereunder, unless there is anything repugnant in the subject or context—

(a) (Deleted by U. P. Act VI of 1955).

¹(aa) 'Associated College' means an institution recognised by the University and authorized under the provisions of this Act to provide the teaching necessary for admission to a degree of the University.

¹(aaa) 'Constituent College' means an institution maintained by the University or by the State Government and authorised to conduct all the teaching necessary for admission to a degree of the University.

(b) "Hall" means a unit of residence for students of the University maintained by the University or, if not so maintained, recognized by the University in accordance with the provisions of this Act, in which tutorial and other supplementary instruction may be given under the direction of the University in accordance with the Ordinances;

¹(bb) 'Management' means the Managing Committee or other body charged with managing the affairs of an institution recognised by the University.

¹(bbb) "Delegacy" means the authority charged under this Act with the care of students of the University not residing in or attached to a Hall."

(c) "Principal" means the head of a College;

(d) "Provost" means the head of a Hall;

(e) "Registered graduates" means graduates registered under the provisions of this Act;

¹(ee) 'State Government' means the Government of the State of Uttar Pradesh.

(f) "Statutes," "Ordinances" and "Regulations" mean, respectively, the Statutes, Ordinances and Regulations of the University for the time being in force;

¹(ff) 'Student of the University' means a person enrolled in the University or a Constituent College for taking a course of study for a degree, diploma, or other academic distinction duly instituted but does not include a person enrolled in an Associated College.

(g) "Teachers" include Professors, Readers, Lecturers, and other persons imparting instruction in the University or in [any Associated College, Constituent College or Hall]².

³(h) 'Teacher of the University' means a person appointed and paid by the University for imparting instruction or conducting research in the University or a Constituent College maintained by the University.

(i) "University" means the University of Lucknow.

The University

3. The University.—(1) The first Chancellor and Vice-Chancellor of the University and the first members of the Court, the Executive Council and the Academic Council and all persons who may hereafter become such officers or members, so long as they continue to hold such office or membership, are hereby constituted a body corporate by the name of the University of Lucknow.

(2) The University shall have perpetual succession and a Common Seal, and shall sue and be sued by the said name.

4. Powers of the University.—The University shall have the following powers, namely—

- (1) To provide for instruction in such branches of learning as ⁴[may be prescribed by the Ordinances] and to make provision for research and for the advancement and dissemination of knowledge ;
- “(2) To institute degrees, diplomas and other academic distinctions, and to hold examinations for and grant and confer such degrees, diplomas and distinctions to and on persons who—
 - (a) shall have pursued a course of study in the University, an Associated College or a Constituent College or carried on research in the University or a Constituent College, under conditions prescribed in the Statutes or Ordinances, or
 - (b) are teachers in educational institutions satisfying conditions prescribed by the Ordinances in this behalf, or
 - (c) shall have carried on research in an institution recognised in that behalf by the University or independently, under conditions laid down in the Statutes and Ordinances,

and shall have passed the examinations of the University under conditions prescribed in the Statutes and the Ordinances.”

- (3) To confer honorary degrees or other distinctions on approved persons in the manner prescribed in the Statutes ;
- (4) Deleted by U. P. Act VI of 1956.
- (5) To co-operate with other Universities authorities in such manner and for such purposes as the University may determine ;
- (6) To institute Professorship, Readerships, Lecturerships, and any other teaching posts required by the University, and to appoint persons to such Professorships, Readerships, Lecturerships and posts ;
- (7) To institute and award Fellowships, Scholarships, Exhibitions, Medals and Prizes in accordance with the Statutes and the Ordinances ;
- “(8) To maintain Constituent Colleges and Halls and to recognise Associated Colleges and Halls not maintained by the University.”

⁵(8-A.) To inspect Associated Colleges and recognised Halls.

(9) To demand and receive such fees as may be prescribed in the Ordinances ;

(10) To supervise and control the residence and discipline of students of the University, and to make arrangements for promoting their health and general welfare ; and

(11) To do all such other acts and things, whether incidental to the powers aforesaid or not, as may be requisite in order to further the objects of the University as a teaching and examining body, and to cultivate and promote arts, science and learning.

5 University open to all classes, castes and creeds.—The University shall be open to all persons of either sex and of whatever race, creed or class, and it shall not be lawful for the university to adopt or impose on any person any test whatsoever of religious belief or profession in order to entitle him to be admitted thereto as a teacher or student, or to hold any office therein, or to graduate thereat, or to enjoy or exercise any privilege thereof, except where such test is specially prescribed by the Statutes, or, in respect of any particular benefaction accepted by the University where such test is made a condition thereof, by any testamentary or other instrument creating such benefaction :

Provided that nothing in this section shall be deemed to prevent religious instruction being given in the manner prescribed by the Ordinances to those not unwilling to receive it by persons (whether teachers of the University or not) approved for that purpose by the Executive Council.

⁵Provided further that nothing in this section shall be deemed to require the University to admit to any course of study a large number of students that may be determined by the Ordinances.

6. Teaching of the University.—⁶(1) Teaching in courses prescribed for the degrees of the University shall include lecturing, work in laboratories and workshops and other teaching conducted in the University or a Constituent College or an Associated College in accordance with any syllabus prescribed by the Ordinances and Regulations.

(2) The authorities responsible for organizing such teaching shall be prescribed by the Statutes.

(3) The courses and curricula shall be prescribed by the Ordinance and [subject thereto by]⁷ the Regulations.

⁶(4) Teaching given by teachers of the University shall be supplemented by tutorial and other supplementary instruction given in the University or under the authority of the University in a Hall.

Teaching given by the teachers of an Associated College or a Constituent College shall be supplemented by tutorial and other supplementary instruction given in the Associated College or Constituent College or in a residential unit attached to it or in another Associated or Constituent College or in the University under an arrangement made between such Associated or Constituent Colleges or with the University.

⁷(4-A) Where attendance at a course of instruction is prescribed as a condition of admission to an examination or a degree of the Univer-

5. *Ins. by ibid.*

6. *Subs. by U. P. Act VI of 1955 S. 5.*

7. *Ins. by ibid.*

sity such condition shall include provision for attendance at instruction referred to in sub-sections (1) and (4).

(5) It shall not be lawful for the University to conduct courses or maintain classes for the purpose of preparing students for admission to the University.

Visitation

[7. Visitation.—The State Government shall have the right to cause an inspection to be made by such person or persons as it may direct of the University, its buildings, laboratories, workshops and equipment, and of any institution maintained or recognised by the University, and also of the examinations, teaching and other work conducted or done by the University and to cause an inquiry to be made in like manner in respect of any matter connected with the University, an Associated College or a Constituent College.

(2) The State Government shall in every case give notice to the University of its intention to cause an inspection or inquiry to be made and the University shall be entitled to appoint a representative who shall have the right to be present and be heard at such inspection or inquiry.

(3) The State Government shall address the Vice-Chancellor with reference to the result of such inspection or inquiry, and the Vice-Chancellor shall communicate to the Executive Council and the Court the views of the State Government with such advice as the State Government may offer upon the action to be taken thereon.

(4) The Vice-Chancellor shall then within such time as the State Government may fix, submit to it a report of the action taken or proposed to be taken by the Executive Council together with the views which the Court may have expressed on the report.

(5) If the University authorities do not, within a reasonable time, take action to the satisfaction of the State Government, the State Government, may, after considering any explanation which the University authorities may furnish, issue such directions as it may think fit and the University Authorities shall be bound to comply with such directions.]

Officers of the University

8. Officers of the University.—The following shall be the officers of the University—

- (1) The Chancellor,
- (2) The Vice-Chancellor,
- (3) The Treasurer,
- (4) The Registrar,
- ^a(4-A) The Dean of Students Welfare.
- (5) The Deans of the Faculties, and

(6) Such other officers as may be declared by the Statutes to be officers of the University.

9. The Chancellor.—(1) [The Governor of Uttar Pradesh shall be the Chancellor]^a. He shall by virtue of his office be the head of the University and the President of the Court, and shall when present preside at meetings of the Court, and at any Convocation of the University.

(2) The Chancellor shall have such powers as may be conferred on him by this Act or the Statutes.

(3) Every proposal for the conferment of an honorary degree shall be subject to the confirmation of the Chancellor.

[10. The Vice-Chancellor.]—(1) The Vice-Chancellor shall be a whole time officer of the University and be appointed by the Chancellor in the manner provided in this section.

(2) The emoluments and other conditions of service of the Vice-Chancellor shall be such as are prescribed by the Statutes and shall not be varied to his disadvantage after his appointment.

(3) The Vice-Chancellor shall hold office for a period of five years but may at any time relinquish office by submitting not less than sixty days in advance of the date on which he wishes to be relieved, his resignation to the Chancellor.

(4) No person who has at any time previously held the office of Vice-Chancellor of the University otherwise than in a vacancy referred to in sub-section (8) shall be eligible for appointment.

(5) The Executive Council shall as far as may be, at least forty days before a vacancy is due to occur in the office of Vice-Chancellor and also whenever so required by the Chancellor, meet for the purpose of deciding the name of the person to be recommended to fill the vacancy. If at this meeting the Executive Council decides unanimously the name of any person his name shall be recommended to the Chancellor who shall thereupon appoint him, and if it fails to decide unanimously the name of any person it shall adjourn to a date within ten days next following. At the adjourned meeting if the Executive Council—

(a) decides unanimously the name of any person, he shall be recommended to the Chancellor who shall thereupon appoint him; or

(b) is unable to decide unanimously the name of any person, it shall in the same meeting decide the names of not more than three persons suitable for being recommended to the Chancellor:

Provided that if more than three names are proposed in that behalf it shall choose three out of them according to the system of proportional representation by means of the single transferable vote. The names so chosen shall then be recommended to the Chancellor.

(6) On receipt of the recommendation under clause (b) of sub-section (5) the Chancellor may, in his discretion—

(a) appoint as Vice-Chancellor any one out of the persons recommended by the Executive Council, or

(b) return the names to the Executive Council for reconsideration.

(7) Where the Chancellor has returned the names for reconsideration under clause (b) of sub-section (6) the Executive Council shall be free—

(a) to recommend to the Chancellor the name of any person decided unanimously in which case the person whose name is so decided shall be appointed by the Chancellor, or

(b) to recommend to the Chancellor, in case it is unable to decide unanimously the name of any person, the names previously recommended by it or any names, not exceeding three in number, decided in the manner laid

down in sub-section (5), and the Chancellor shall appoint any one out of the persons so recommended.

(8) Where a vacancy occurs or is likely to occur in the office of Vice-Chancellor by reason of leave, or any cause other than resignation in accordance with sub-section (3) or the expiry of the term the Registrar shall report the fact forthwith to the Chancellor. If the vacancy is, or is likely, to last for a period exceeding six months, the Chancellor shall call upon the Executive Council to forward its recommendations and the provisions of sub-sections (1) and (5) to (7) shall, in so far as may be, applied for the filling of the vacancy. In other cases the Executive Council may, subject to the approval of the Chancellor, either appoint the Vice-Chancellor, or make such other arrangements for carrying on the office of the Vice-Chancellor as it may think fit.

(9) Until arrangements have been made under sub-section (8), the Registrar shall carry on the current duties of the office of Vice-Chancellor, but he shall not preside at meetings of the University Authorities.]

⁹[**11. Powers and duties of the Vice-Chancellor**—(1) The Vice-Chancellor shall be the principal executive and academic officer of the University and shall, in the absence of the Chancellor, preside at meetings of the Court and at any convocation of the University. He shall be an *ex-officio* member and chairman of the Executive Council and the Academic Council. He shall have the right to speak in and to take part in the proceedings of the meetings of any other Authority or body of the University but shall not merely by virtue of this sub-section be entitled to vote thereat.

(2) It shall be the duty of the Vice-Chancellor to ensure the faithful observance of the provisions of this Act, the Statutes and the Ordinances and he shall, without prejudice to the powers of the Chancellor under Section 39, possess all such powers as may be necessary in that behalf.

(3) The Vice-Chancellor shall have power to convene meetings of the Court, the Executive Council and the Academic Council :

Provided that he may delegate this power to any other officer of the University.

(4) The Vice-Chancellor shall exercise general control over the affairs of the University and shall be responsible for the due maintenance of discipline therein.

(5) The Vice-Chancellor may start disciplinary proceedings against any salaried officer or teacher of the University and may, wherever necessary also place him under suspension. Where disciplinary proceedings have been started as aforesaid by the Vice-Chancellor and the case in his opinion—

(a) is not such as may call for punishment by dismissal, removal, stoppage of increment or reduction in emoluments he may pass such orders as he deems fit ;

(b) is such as may call for a punishment as aforesaid, he shall hold an enquiry jointly with two other persons, appointed in the manner to be prescribed in the statutes, one of whom is or has been Judge of a High Court.

(6) In any case in which enquiry has been held under clause (b) of sub-section (5), the Vice-Chancellor shall, upon conclusion of the enquiry, submit the report to the Executive Council. If there is a difference of opinion among the Vice-Chancellor and the persons jointly holding the enquiry with him under clause (b) of sub-section (5) ; regarding the

recommendation to be made in the report, the recommendation shall be expressed in terms of the views of the majority. The Executive Council shall thereupon pass orders according to the recommendation made in the report unless it differs therefrom in which case it shall refer the matter to the Chancellor with its recommendation and the Chancellor may then make such order as he deems just and proper.

(7) In any emergency which in the opinion of the Vice-Chancellor, requires immediate action to be taken, he shall take such action as he deems necessary and shall, at the earliest opportunity, report the action taken to the officer, authority or other body who or which in the ordinary course would have dealt with the matter; but nothing in this sub-section shall be deemed to empower the Vice-Chancellor to incur any expenditure not duly authorised and provided for in the budget.

(8) Where any action taken by the Vice-Chancellor under clause (a) of sub-section (5) or sub-section (7) affects any person in the service of the University to his disadvantage such person may prefer an appeal to the Executive Council within fifteen days from the date on which the action is communicated to him.

(9) Subject as aforesaid, the Vice-Chancellor shall give effect to the orders of the Executive Council regarding the appointment, suspension and dismissal of officers and teachers of the University.

(10) The Vice-Chancellor shall exercise such other powers as may be prescribed by the Statutes and the Ordinances.]

¹⁰[12. **The Treasurer.**—(1) The Treasurer shall be appointed by the Chancellor in the manner hereinafter appearing.

¹⁰(1-A) The Executive Council shall, so far as may be, at least thirty days before the date on which a vacancy is due to occur in the office of Treasurer and also whenever so required by the Chancellor, submit to the Chancellor the name or names of not more than three persons suitable to hold the office of Treasurer.

¹⁰(1-B) Where the name or the names proposed in the Executive Council for submission to the Chancellor under sub-section (1-A) do not exceed three in number, the Council shall submit all such names, but if the number exceeds three the Council shall, out of the names proposed, elect three names according to the system of proportional representation by means of the single transferable vote.

¹⁰(1-C) Where one name only has been submitted by the Executive Council the Chancellor shall appoint the person whose name has been so submitted. In other cases the Chancellor shall appoint one of the persons whose names have been submitted by the Executive Council under sub-section (1-B).

¹⁰(2) The term of office of the Treasurer shall be six years but he shall notwithstanding the expiry of the term continue in office until a successor has been appointed. He shall receive such remuneration (if any) from the funds of the University as may be prescribed by the Statutes.

¹⁰(3) The provisions relating to resignation, conditions of service other than emoluments, the filling of temporary vacancies and arrangements for the carrying on of current duties contained in sub-sections (2), (3), (8) and (9) of Section 10 shall *mutatis mutandis* apply to the office of Treasurer.

¹⁰(4) The Treasurer shall be an *ex-officio* member of the Executive Council and shall manage the property and investments of the University

and advise in regard to its financial policy. He shall be responsible for the presentation of the annual estimates (in this Act called the budget) and statement of accounts.

¹⁰(5) The Treasurer shall have the duty—

- (i) to ensure that no expenditure not authorised in the bud et is incurred by the University (otherwise than by way of investment), and
- (ii) to disallow any expenditure which may contravene the terms of any Statute or Ordinance, or for which provision is required to be made by Statutes or Ordinances but has not been so made.]

(6) All contracts shall be signed by the Treasurer on behalf of the University.

(7) He shall exercise such other powers as may be prescribed by the Statutes and the Ordinances.

¹⁰[**13. The Registrar.**—(1) The Registrar shall be a whole-time officer of the University and shall be appointed by the Executive Council on the recommendation of a Selection Committee consisting of the following, namely—

- (i) the Vice-Chancellor :
- (ii) an educationist nominated by the Chancellor ; and
- (iii) the Chairman of the Public Service Commission, Uttar Pradesh or a member thereof nominated in this behalf by the Chairman.

(2) The emoluments of the Registrar shall be prescribed by the Ordinances.

(3) The Registrar shall be responsible for the due custody of the records and the Common Seal of the University. He shall be *ex-officio* Secretary of the Court, the Executive Council, the Academic Council, the Selection Committee, the Finance Committee and the Committee of Reference and shall be bound to place before these Authorities all such information as may be necessary for the transaction of business. He shall perform such other duties as may be prescribed by the Statutes and the Ordinances or required, from time to time, by the Executive Council or the Vice-Chancellor.

(4) He shall conduct the examinations and make all other arrangements necessary therefor and be responsible for the due execution of all processes connected therewith.

(5) The Registrar shall not be offered nor shall he accept any remuneration for any work in the University save such as may be provided for by the Statutes and the Ordinances.]

14. Other officers.—The powers of officers of the University other than the Chancellor, the Vice-Chancellor, the Treasurer and the Registrar, shall be prescribed by the Statutes and the Ordinances.

Authorities of the University

15. Authorities of the University.—The following shall be the authorities of the University :—

- (1) The Court,
 - (2) The Executive Council,
 - (3) The Academic Council,
 - (4) The Committee of Reference.
- ¹¹[(5) The Boards of Faculties.]

- ¹¹[(5-A) Selection Committees for the appointment of teachers, and]
 (6) Such other authorities as may be declared by the Statutes to be authorities of the University.

¹²**[18. The Court.]**—(1) The Court shall consist of the following persons, namely :

Class I—Ex-officio members :

- (i) the Chancellor,
- (ii) the Vice-Chancellor,
- (iii) the Minister for Education in the Government of Uttar Pradesh,
- (iv) the Minister for Health, in the Government of Uttar Pradesh,
- (v) the Treasurer,
- (vi) the members of the Executive Council,
- (vii) the Director of Medical [and Health]^{12a} Services, Uttar Pradesh,
- (vii-a) the Director of Education, Uttar Pradesh,
- (viii) all Heads of Departments of Teaching in the University or a Constituent College, and all Professors of the University or a Constituent College who are not Heads of Departments,
- (ix) all Principals of Constituent Colleges and Associated Colleges,
- (x) such other persons with reference to offices held by them as may be prescribed by the Statutes.

Class II—Life members :

- (xi) Such persons as may be appointed by the Chancellor to be life members on the ground that they have rendered eminent service to the cause of education provided that their number shall at no time be more than four.
- (xii) All individuals who have made donations of not less than Rs. 20,000 to or for the purposes of the University or a Constituent College.

Class III—Other members :

- (xiii) Persons to represent such academic and non-academic bodies and interests as may be prescribed in this behalf by the Statutes.
- (xiv) Persons nominated by associations, individuals or bodies of individuals making to the University or a Constituent College donations or annual contributions of an amount to be prescribed by the Statutes.
- (xv) Two members of the Legislative Council of the State to be elected by it.
- (xvi) Five members of the Legislative Assembly of the State to be elected by it.
- (xvii) Representatives of the Registered Graduates to be elected by Registered Graduates of such standing as may be prescribed by the Statutes from among such Registered Graduates as are not in the service of the University, an Associated College, a Constituent College or a Hall and whose names have been on the Register of Graduates for three years or if the Statutes prescribe a longer period, for such period.
- (xviii) Representatives of donors to the University or a Constituent College not being individuals or persons referred to in items (xii) and (xiv).

- (xix) Representative of teachers of the University (other than teachers included in Class I), the Provosts, the Delegacy and such Boards established under Section 25 as may be prescribed by the Statutes.

Explanation.—In this item the expression “teachers of the University” includes teachers of Constituent Colleges maintained by the State Government.

- (xx) Not more than ten persons to be appointed by the Chancellor one of whom shall be a member of the Management of an Associated College.
- (xxi) Persons elected by the British India Association of Avadh from their own body :

Provided that this item shall cease to have effect from July 1, 1965, and any representation thereunder shall similarly cease with effect from the said date.

(2) (Omitted by U. P. Act XV of 1956).

(2-A) (Omitted by U. P. Act XV of 1956).

(3) The number of members referred to in items (xiii) to (xxi) of sub-section (1), their tenure and the manner of their appointment, election or nomination shall, save where otherwise provided in this section be prescribed by the Statutes.

(4) The Court may declare vacant the seat of a member, other than an *ex-officio* or life member, who has absented himself from three consecutive meetings of the Court without sufficient cause.]

17. Meetings of the Court.—(1) The Court shall, on a date to be fixed by the Vice-Chancellor, meet once a year at a meeting to be called the annual meeting of the Court.

(2) The Vice-Chancellor may, whenever he thinks fit, and shall, upon a requisition in writing signed by not less than thirty members of the Court, convene a special meeting of the Court.

18. Powers and duties of the Court.—Subject to the provisions of this Act, the Court shall exercise the following powers and perform the following duties, namely :—

- (a) of making Statutes, and of amending or repealing the same,
- (b) of considering and cancelling Ordinances,
- ¹⁸[(c) of considering and passing resolutions on the annual report, the annual accounts, the financial estimates and any matter of general policy relating to University education and administration.]
- (d) of electing members to serve on the Committee of Reference, and shall exercise such other powers and perform such other duties as may be conferred or imposed upon it by this Act or the Statutes.

¹⁸[**19. The Executive Council.**—Thy Executive Council shall be the executive body of the University and shall consist of the following persons namely :

- (i) The Vice-Chancellor ;
- (ii) The Treasurer ;
- (iii) All Deans of Faculties ;
- (iv) One Principal of an Associated College taking office by rotation according to seniority ;

¹⁴a[(iv-a) One Principal of a Constituent College who is not otherwise a member of the Council, to be appointed in such manner by such authority and for such term as may be prescribed by Statutes];

(v) The Dean of Students Welfare;

(vi) One representative of the Provosts and the Delegacy;

(vii) Two teachers of the University;

Explanation.—In this item the expression ‘teachers of the University’ includes teachers of Constituent Colleges maintained by the State Government.

(viii) Five persons to be elected in the manner prescribed by the Statutes by the Court from among such members as are not in the service of the University, a Constituent College, an Associated College or a Hall.

(ix) Persons less in number by one than the Deans of Faculties to be nominated by the Chancellor.

(2) The manner of selection of the members under items (vi) and (vii) of sub-section (1) shall be prescribed by the Statutes.

(3) The term of office of members other than *ex-officio* members shall be three years.]

¹⁴[**20. Powers and duties of the Executive Council.**—(1) Subject to the provisions of this Act and the Statutes, the Executive Council shall have the following powers and duties namely,—

(a) to hold and control the property and funds of the University and issue any general directive in that behalf;

(b) to accept the transfer of any movable or immovable property on behalf of the University;

(c) to administer any funds placed at the disposal of the University for specific purposes;

(d) to prepare the budget of the University;

(e) to award fellowships, scholarships, bursaries, medals and other rewards in accordance with the Statutes and Ordinances;

(f) to appoint the officers, teachers and other servants of the University, to define their duties and the conditions of their service and to provide for the filling of casual vacancies in their posts;

(g) to appoint examiners and to direct the holding of examinations and publication of results of examinations;

(h) to arrange for and direct the inspection of Associated Colleges, Halls and other places of residence of students;

(i) to direct the form and use of the Common Seal of the University;

(j) to regulate and determine all matters concerning the University in accordance with this act, the Statutes and the Ordinances, to exercise such other powers as may be conferred or imposed on it by this Act and the Statutes and to exercise all other powers of the University not otherwise provided for by or under this Act.

(2) The Executive Council shall appoint a committee (hereinafter called the Finance Committee) consisting of the Treasurer and four other persons from amongst its members out of whom not more than two shall be persons in the service of the University, to advise the Executive

Council on matters relating to the administration of the property and funds of the University. The Treasurer shall be the Chairman of the Finance Committee.

(3) The Executive Council shall not exceed the limits of recurring and non-recurring expenditure to be incurred in each financial year as determined by the Committee of Reference.

¹⁴b[(4) The Executive Council shall not take any action in regard to the number, qualification and emoluments of teachers and the fees payable to examiners, except after considering the advice of the Academic Council.]

(5) The Executive Council shall give due consideration to the resolutions of the Court and take such action thereon as it shall deem fit and report it to the Court. Where, in any case, the Executive Council is unable to take action in accordance with any resolution it shall inform the Court of its reasons therefor.

(6) The Executive Council may, subject to conditions to be laid down in the Statutes, delegate such of its powers as it deems fit to an officer or authority of the University.

21. The Academic Council.—[(1)]¹⁵The Academic Council shall be the academic body of the University, and shall, subject to the provisions of this Act, the Statutes and the Ordinances, have the control and general regulation, and be responsible for the maintenance of standards of teaching and examination within the University, and shall exercise such other powers and perform such other duties as may be conferred or imposed upon it by the Statutes. It shall have the right to advise the Executive Council on all academic matters. The constitution of the Academic Council and the term of office of its members, other than *ex-officio* members, shall be prescribed by the Statutes.

¹⁶[(2) *Standing Committee of the Academic Council.*—There shall be a Standing Committee of the Academic Council. The constitution, powers and functions of the Committee shall be prescribed by the Statutes.]

¹⁷[**22. Committee of Reference.**—(1) The Committee of Reference shall consist of—

(i) the Vice-Chancellor ;

(ii) the Treasurer ;

(iii) three members of the Court, not being members of the Executive Council, to be elected according to the system of proportional representation by means of the single transferable vote, of whom one shall be a teacher of the University and the other two shall be persons not in the service of the University, a Constituent College, an Associated College or a Hall;

(iv) two persons to be nominated by the State Government.

(2) The Vice-Chancellor shall be the Chairman and the Registrar shall be the Secretary of the Committee.

(3) The Committee of Reference shall, having regard to the income and resources of the University, fix limits for the total recurring and total non-recurring expenditure for the ensuing year, and shall perform such other functions as may be prescribed by or under this Act.

(4) The Committee of Reference may, for any special reasons, revise, during the financial year, the limits of expenditure fixed by it under sub-section (3).]

¹⁴-b. Subs. by U. P. Act XV of 1956, S. 2.

¹⁵. Ins. by U. P. Act VI of 1955, S. 18.

¹⁶. Subs. by U. P. Act VI of 1955, S. 19.

¹⁶[**23. The Faculties.**—(1) The University shall include such Faculties as may be prescribed by the Statutes.

(2) Each Faculty shall comprise such Departments of Teaching as may be prescribed by the Statutes. Subjects of study shall be assigned to various Departments by the Ordinances.

(3) There shall be a Board of each Faculty the constitution and powers of which shall be prescribed by the Statutes.

¹⁸[(4) There shall be a Dean of each Faculty who shall be chosen in such manner and for such period as may be prescribed by the Statutes.]

(5) The Dean shall be the Chairman of the Board of the Faculty and be responsible for the due observance of the Statutes, Ordinances and Regulations relating to the Faculty. He shall be further responsible for the organization and conduct of teaching and research work of the Departments comprised in the Faculty.

(6) There shall be a Head in each Department of Teaching who shall be responsible to the Dean for the organization of the teaching in the Department. The senior most Professor of a Department shall be the Head of the Department, and where there is no Professor in a Department the senior-most Reader thereof shall be the Head.

(7) The duties, powers and functions of the Heads of Departments shall be prescribed by the Ordinances.]

(8) There shall be established Committees of Courses and studies each in respect of one or more subjects of study. The Constitution of the Committees shall be prescribed by the Ordinances.

24. Other authorities of the University.—The constitution, powers and duties of such other authorities as may be declared by the Statutes to be authorities of the University shall be provided for in the manner prescribed by the Statutes.

University Boards

25. University Boards.—The University shall include [such]¹⁷ Boards as may be prescribed by the Statutes.

26. [Deleted by U. P. Act XV of 1956].

¹⁹[**26-A. Manner of appointment of officers and members of authorities.**—(1) Save where expressly provided to the contrary, officers and members of the authorities of the University shall be chosen in the manner prescribed by the Statutes.

(2) Where provision is made by this Act or the Statutes for any appointment by rotation according to seniority or other qualification, the manner of rotation or determination of seniority and other qualification shall be prescribed by the Statutes.]

Statutes, Ordinances and Regulations

²⁰[**27. Statutes.**—Subject to the provisions of this Act, the Statutes may provide for any matter relating to the University and shall, in particular, provide for the following :

(a) the constitution, powers and duties of the authorities and Boards of the University ;

(b) the election, appointment and continuance in office of the members of the said authorities and Boards of the University and the filling of vacancies and all other matters

17. Subs. by *ibid*, S. 21.

18. Subs. by U. P. Act XV of 1956.

19. Ins. by U. P. Act VI of 1955, S. 23.

20. Subs. by *ibid* S. 24.

- relating to those authorities and Boards for which it may be necessary or desirable to provide ;
- (c) the institution and maintenance of Constituent Colleges and Halls ;
 - (d) the designation, manner of appointment, powers and duties of the officers of the University ;
 - (e) the classification and manner of recruitment of teachers ;
 - (f) the constitution of a provident fund and the establishment of an insurance scheme for the benefit of officers, teachers and other employees of the University ;
 - (ff) the institution of degrees and diplomas ;
 - (g) the conferment of honorary degrees ;
 - (h) the withdrawal of degrees, diplomas, and other academic distinctions ;
 - (i) the conditions on which an institution may be granted recognition as an Associated College and be liable to the withdrawal of such recognition ;
 - (j) the establishment, combination, sub-division and abolition of Faculties ;
 - (k) the establishment of Departments of Teaching in the Faculties ;
 - (l) the maintenance ; of a register of Registered Graduates ;
 - (m) the holding of Convocation ;
 - (n) the institution of fellowships, scholarships, bursaries, medals and prizes ; and
 - (o) all other matters which are required by this Act to be provided for by the Statutes.]

28. Statutes how made.—(1) The first Statutes shall be those set out in the Schedule.

(2) The Statutes may be amended, repealed or added to by Statutes made by the Court in the manner hereinafter appearing.

(3) The Executive Council may propose to the Court the draft of any Statute to be passed by the Court. Such draft shall be considered by the Court at its next meeting. The Court may approve such draft and pass the Statute, or may reject it or return it to the Executive Council for reconsideration, either in whole or in part, together with any amendments which the Court may suggest.

(4) Where any Statute has been passed or a draft of a Statute has been rejected by the Court, it shall be submitted to the Chancellor, who may refer the Statute or draft back to the Court for further consideration or, in the case of a Statute passed by the Court, assent thereto or withhold his assent. A Statute passed by the Court shall have no validity until it has been assented to by the Chancellor.

(5) The Executive Council shall not propose the draft of any Statute affecting the status, powers or constitution of any authority of the University until such authority has been given an opportunity of expressing an opinion upon the proposal. Any opinion so expressed shall be in writing and shall be considered by the Court, and shall be submitted to the Chancellor.

²¹[**29. Ordinances.**—(1) Subject to the provisions of this Act and the Statutes, the Ordinances may provide for any matter permitted by this Act or the Statutes to be provided for by Ordinances and for any other matter, which the Executive Council considers it advisable to provide for by Ordinances.

(2) Without prejudice to the generality of the power conferred by sub-section (1), the Ordinances shall provide for the following matters, namely—

- (a) the admission of students to the University or a Constituent College or an Associated College and their enrolment and continuance as such ;
- (b) the courses of study to be laid down for all degrees and diplomas of the University ;
- (c) the conditions under which students shall be admitted to the degree, diploma or other courses and to the examinations of the University, and shall be eligible for the award of degrees and diplomas ;
- (d) the conditions of residence of the students of the University and the levying of fees for residence in Halls maintained by the University ;
- (e) the recognition of Halls not maintained by the University ;
- (f) the number, qualifications, emoluments and other conditions of service (including the age of retirement) of the teachers and salaried officers of the University and the preparation and maintenance of a record of their service and activities ;
- (g) the fees which may be charged by the University for any purpose ;
- (h) the conditions subject to which persons may be recognised as qualified to give instruction in Halls ;
- (i) the conditions and mode of appointment and the duties of examining bodies, examiners and moderators ;
- (j) the conduct of examinations ;
- (k) the remuneration and allowances, including travelling and daily allowances, to be paid to persons employed on the business of the University ;
- (l) the conditions of the award of fellowships, scholarships, studentships, bursaries, medals and prizes ;
- (m) all other matters which by this Act or by the Statutes are required to be or may be provided for by the Ordinances.]

30. Ordinances how made.—(1) Save as otherwise provided in this section, Ordinances shall be made by the Executive Council :

Provided that no Ordinance shall be made—

- (a) affecting the admission of students, or prescribing examinations to be recognized as equivalent to the University examinations or the further qualifications mentioned in sub-section (2) of Section 34 for admission to the degree courses of the University, unless a draft of the same has been proposed by the Academic Council, or
- (b) affecting the conditions and mode of appointment and duties of examiners and the conduct or standard of examinations or any course of study, except in accordance with a proposal of the Faculty or Faculties concerned, and unless a draft of such Ordinance has been proposed by the Academic Council, or
- (c) affecting the number, qualifications and emoluments of teachers of the University, unless a draft of the same has been proposed by the Academic Council, or
- (d) affecting the conditions of residence of students, except after consultation with [the relative Board established under

Section 25]²².

- ²³[(e) affecting the income or expenditure of the University, unless a draft of such Ordinance has been submitted to the State Government and the State Government does not object.]

(2) The Executive Council shall not have power to amend any draft proposed by the Academic Council under sub-section (1), but may reject it or return it to the Academic Council for reconsideration, either in whole or in part, together with any amendments which the Executive Council may suggest.

(3) All Ordinances made by the Executive Council ²⁴[shall have effect from such date as it may direct and] shall be submitted, as soon as may be, to the Chancellor and the Court, and shall be considered by the Court at its next meeting. The Court shall have power, by a resolution passed by a majority of not less than two-thirds of the members present at such meeting to cancel any such Ordinance, and such Ordinance shall, from the date of such resolution, be void.

(4) The Chancellor may, at any time after any Ordinance has been considered by the Court, signify to the Executive Council his disallowance of such Ordinance, and, from the date of receipt by the Executive Council of intimation of such disallowance, such Ordinance shall become void.

(5) The Chancellor may direct that the operation of any Ordinance shall be suspended until he has had an opportunity of exercising his power of disallowance. An order of suspension under this sub-section shall cease to have effect on the expiration of one month from the date of such order, or on the expiration of fifteen days from the date of consideration of the Ordinance by the Court, whichever period expires later.

(6) Where the Executive Council has rejected the draft of an Ordinance proposed by the Academic Council, the Academic Council may appeal to the Chancellor who, after obtaining the views of the Executive Council, may, if he approves the draft, make the Ordinance. An Ordinance made under this sub-section shall cease to have effect from the date of the next meeting of the Court unless confirmed by it.

31. Regulations.—The authorities and the Boards of the University may make Regulations consistent with this Act, the Statutes and the Ordinances—

- (a) laying down the procedure to be observed at their meetings and the number of members required to form a quorum ;
- (b) providing for all matters which by this Act, the Statutes or the Ordinances are to be prescribed by Regulations ; and
- (c) providing for all other matters solely concerning such authorities and Boards and not provided for by this Act, the Statutes and the Ordinances.

(2) Every authority of the University shall make Regulations providing for the giving of notice to the members of such authority of the dates of meetings and of the business to be considered at meetings, and for the keeping of a record of the proceedings of meetings.

(3) The Executive Council may direct the amendment, in such manner as it may specify, of any Regulation made under this section or the annulment of any Regulation made under sub-section (1) ²⁴[by any authority of the University other than the Court] :

²². Subs. by *ibid.* S. 26.

²³. Ins. by *ibid.* S. 26.

²⁴. Ins. by U. P. Act VI of 1956, S. 26.

Provided that any authority or Board of the University which is dissatisfied with any such direction may appeal to the Chancellor, who, after obtaining the views of the Executive Council, may pass such orders as he thinks fit.

²⁴[(4) The Academic Council may, subject to the provisions of the Ordinances, make Regulations providing for courses of study for the various examinations and degrees of the University after receiving drafts of the same from the Board of the Faculty concerned.]

The Academic Council may not alter a draft received from the Board of the Faculty concerned but may reject the draft received or return it to the Board of the Faculty concerned for further consideration together with its own suggestions.]

24[31-A. Teachers.—(1) Subject to the provisions of this Act, and except as provided in sub-section (3), the teachers of the University and the Associated Colleges shall be appointed by the Executive Council or the Management of the Associated College, as the case may be, on the recommendation of the Selection Committee in such manner as may be prescribed by the Statutes.

(2) Every teacher appointed under sub-section (1) shall, in the first instance, be on probation for such period as may be prescribed by the Statutes and he shall not be confirmed—

(a) if he is a teacher of the University except by the order of the Executive Council after considering the reports of the Vice-Chancellor and the Head of the Department and the Dean concerned, and

(b) if he is a teacher of an Associated College, except by the order of the Management after considering the report of the senior teacher of the subject and the Principal of the College.

(3) The Executive Council or the Management, as the case may be, may make officiating appointments in a vacancy caused by the grant of leave to an incumbent for a period not exceeding ten months without reference to the Selection Committee but shall not fill any other vacancy or post likely to last for more than six months without such reference.

(4) Principals and teachers other than teachers referred to in sub-section (1) shall be appointed by such authorities and in such manner as may be prescribed by the Statutes.

(5) There shall be a Selection Committee for appointment of teachers in each subject of study. The constitution, powers and functions of the Selection Committees and the procedure to be followed in making appointments shall be prescribed by the Statutes.]

Residence : Colleges and Halls

32. Residence.—Every student of the University shall reside ²⁵[***], or under such conditions as may be prescribed by the Statutes and the Ordinances.

²⁶**33. Colleges and Halls.**—(1) Halls maintained by the University shall be such as may be named by the Statutes.

²⁷[* * *] Halls other than those maintained by the University shall be recognized by the Executive Council on such general or special conditions as may be prescribed by the Ordinances.

25. Del. by *ibid*, S. 30.

26. Subs. by *ibid*, S. 31.

27. Omit. by U. P. Act VI of 1956, S. 31.

²⁸[(3) The conditions of residence in Halls and other places of residence for students of the University shall be prescribed by the Ordinances and every Hall and such other place shall be subject to inspection by an officer of the University or other person, authorised in this behalf by the Executive Council.]

(4) The Executive Council shall have power to suspend or withdraw the recognition of any ²⁹[Hall or other place of residence for students of the University] which is not conducted in accordance with the conditions prescribed by the Ordinances :

Provided that no such action shall be taken without affording the Committee of Management of such College or Hall an opportunity of making such representation as it may deem fit.

³⁰[**33-A. Associated Colleges.**—(1) Associated Colleges shall be such as may be named by the Statutes.

(2) It shall be lawful for an Associated College to make arrangements with any other Associated College or Colleges or with the University for co-operation in the work of teaching.

(3) The conditions of recognition of an Associated College shall be such as may be prescribed by the Statutes or imposed by the Executive Council but no Associated College shall be authorised to impart instruction for post-graduate degrees.

(4) Except as provided by this Act, the management of an Associated College shall be free to manage and control the affairs of the College and be responsible for its maintenance and upkeep. The Principal of every such College shall be responsible for the due maintenance of discipline in it.

(5) An Associated College shall be inspected at intervals of not more than three years in the manner prescribed by the Statutes and a report of the inspection shall be made to the Executive Council.

(6) The recognition of an Associated College may, with the previous sanction of the Chancellor, be withdrawn by the Executive Council if it is satisfied, after considering any explanation furnished by the Management, that it has ceased to fulfil the conditions of its recognition or that it persists in making default in the performance of its duties under this Act or in the removal of any defects in its work pointed out by the Executive Council.]

³⁰[**33-B. The Delegacy.**—There shall be a Delegacy to supervise the arrangements relating to the residence, health, and welfare of students of the University not residing in or under the care of any Constituent College or Hall. The constitution, powers and duties of the Delegacy shall be prescribed by the Statutes.]

³⁰[**33-C. Constituent Colleges.**—(1) Constituent Colleges shall be such as may be named by the Statutes.

(2) The Principal of a Constituent College shall be responsible for the discipline of the students enrolled in the College and shall have general control over the ministerial and inferior staff allotted to the College. He shall exercise such other powers as may be prescribed by the Statutes].

Admissions and Examinations

34. Admission to University courses.—(1) Admission of stu-

²⁸. *Subs. by ibid.*

²⁹. *Subs. by ibid.*

³⁰. *Ins. by ibid.*

dents to the University shall be made by an admission committee [***]³¹ appointed for that purpose by the Academic Council.

(2) Students shall not be eligible for admission to a course of study for a degree unless they have passed the Intermediate examination of an Indian University incorporated by any law for the time being in force, or an examination recognised in accordance with the provisions of this section as equivalent thereto, and possess such further qualifications (if any) as may be prescribed by the Ordinances :

Provided that until such recognised examination be established students who have passed an examination for admission instituted by the University in accordance with the Ordinances shall be eligible for admission.

(3) The conditions under which students may be admitted to the diploma courses of the University shall be prescribed by the Ordinances.

(4) The University shall not, save with the previous sanction of an ³²[Chancellor] recognise (for the purpose of admission to a course of study for a degree), as equivalent to its own degrees, any degree conferred by any other University, or, as equivalent to the Intermediate Examination of an Indian University, any examination conducted by any other authority.

³³[(5) Any student whose work is unsatisfactory may be removed from the University or a Constituent College or an Associated College in accordance with the provisions of the Ordinances.]

35. Examinations.—(1) All arrangements for the conduct of examinations shall be made by the Academic Council in such manner as may be prescribed by this Act and the Ordinances.

(2) If any examiner is for any cause incapable of acting as such, the Vice-Chancellor shall appoint an examiner to fill the vacancy.

³²[(3) At least one person who is not an employee of the University, a Constituent College, an Associated College or a Hall shall be appointed examiner for each subject of study for a degree.]

³³[(4) The Board of each Faculty shall appoint an Examination Committee for every subject assigned to the Faculty. The Committee shall consist of such persons as the Board may, subject to the approval of the Academic Council, appoint from among its own members or from outside. The Committee shall have power to moderate question papers set for examinations, review the quality of the work submitted by candidates for examination, report on the standard of attainment and make recommendations in regard to any of these matters. Any review, report or recommendation made by the Committee shall be laid before the Academic Council for its consideration.]

³³[(5) Every person appointed as examiner shall, as a condition of appointment, agree that he will not undertake examination work in excess of the limits laid down in the Ordinances.]

Annual Report and Accounts

36. Annual report.—The annual report of the University shall be prepared under the direction of the Executive Council, and shall be submitted to the Court on or before such date as may be prescribed by the Statutes, and shall be considered by the Court at its annual meeting. The Court may pass resolutions thereon and communicate the same to the Executive Council which shall take them into consideration and take such action thereon as it thinks fit.

31. Omit. by *ibid.*

32. Subs. by *ibid.*

33. Ins. by *ibid.*

37. Annual accounts.—³⁴[(1) The annual accounts and balance sheet of the University shall be prepared under the directions of the Executive Council, and all moneys accruing to or received by the University from whatever source drawn and all amounts disbursed or paid shall be entered in the accounts.]

³⁴[(1-A) A copy of the accounts and the balance sheet shall be submitted to the State Government which shall cause an audit to be carried out by auditors of high standing.]

³⁴[(2) The accounts when audited shall be printed and copies thereof shall together with copies of the audit report be submitted by the Executive Council to the Court and the State Government.]

³⁵[(2-A) It shall be lawful for the State Government to require any person who is found to have spent or authorised the expenditure of funds in excess of amounts provided in the budget or in violation of any provision of this Act, the Statutes or the Ordinances, re-imburse the amount so spent and the State Government may take all such steps as may be deemed necessary :

Provided that the State Government shall before requiring any person as aforesaid give him a reasonable opportunity of making a representation.]

(3) The Executive Council shall also prepare before such date as may be prescribed by the Statutes a statement of the financial estimates for the ensuing year.

(4) Every item of new expenditure of or above such amount as may be prescribed by the Statutes which it is proposed to include in the financial estimates shall be referred by the Executive Council to the Committee of Reference, which may make recommendations thereon.

(5) The Executive Council shall, after considering the recommendations (if any) of the Committee of Reference, submit the financial estimates as finally approved by it to the Court with such recommendations.

(6) The annual accounts and the financial estimates shall be considered by the Court at its annual meeting and the Court may pass resolutions with reference thereto and communicate the same to the Executive Council, [* * * * *]³⁶

³⁵[(7) Except in so far as such expenditure is incurred out of funds accruing under clause (c) of sub-section (1) of Section 20, it shall not be lawful for the Vice-Chancellor or the Executive Council to incur any expenditure not sanctioned in the budget] :

Provided that where there has been a disagreement between the Executive Council and the Committee of Reference upon any item of expenditure referred to it under sub-section (4), the decision of the Court thereon shall be final.

Legislative changes :—In sub-section (2) the word (and) between 'Court' and 'to' was inserted and the words after 'Government' at the end were omitted by A. O.

Supplementary Provisions

38. Removal of names from University authorities or bodies or from register of registered graduates.—The Chancellor may, on the recommendation of not less than two-thirds of the members of the Executive Council, remove the name of any person from any of the authorities or other bodies of the University or from the register of registered graduates.

34. Subs. by U. P. Act VI of 1955.
S. 35.

35. Ins. by *ibid.*
36. Deleted by *ibid.*

39. Disputes as to constitution of University authorities and bodies.—If any question arises whether any person has been duly elected or appointed as, or is entitled to be, a member of any authority or other body of the University, ³⁷[or whether any decision of the University or any authority thereof is in conformity with this Act, the Statutes or the Ordinances], the matter shall be referred to the Chancellor whose decision thereon shall be final.

40. Constitution of committees.—Where any authority of the University is given power by this Act or the Statutes to appoint committees, such committees shall, unless otherwise provided, consist of members of the authority concerned and of such other persons (if any) as the authority in each case may think fit.

41. Filling of casual vacancies.—[(1)]³⁷ All casual vacancies among the members (other than *ex-officio* members) of any authority or other body of the University shall be filled as soon as conveniently may be by the person or body who appointed, elected or co-opted the member whose place has become vacant, and the person appointed, elected or co-opted to a casual vacancy shall be a member of such authority or body for the residue of the term for which the person whose place he fills would have been a member.

³⁷[(2) A person who is a member of an authority of the University as a representative of another body, whether of the University or outside, shall retain his seat on the University authority so long as he continues to be member of the body by which he was appointed or elected and thereafter till his successor is duly appointed.]

42. Proceedings of University authorities and bodies not invalidated by vacancies.—No act or proceeding of any authority or other body of the University shall be invalidated merely by reason of the existence of a vacancy or vacancies among its members ³⁷[or by reason of some person having taken part in the proceedings who is subsequently found not to have been entitled to do so.]

43. Conditions of service.—(1) Every salaried officer and teacher of the University shall be appointed on a written contract. The contract shall be lodged with the Registrar of the University, and a copy thereof shall be furnished to the officer or teacher concerned.

(2) Any member of the public services in India whom it is proposed to appoint to a post in the University shall, subject to the approval of such appointment by the Government [concerned] have the option—

(i) of having his services lent to the University for a specified period and remaining liable to recall to Government service at the [option of the Government concerned] at the end of that period, or

(ii) of resigning Government service on entering the service of the University.

Legislative changes :—The word (concerned) between 'Government' and 'have' was inserted in sub-section (2) by A. O. and the words in brackets in clause (i) of sub-section (2) were substituted by *ibid*.

44. Tribunal of arbitration.—Any dispute arising out of a contract between the University and any officer or teacher of the University shall, on the request of the officer or teacher concerned, be referred to a Tribunal of arbitration consisting of one member appointed by the Executive Council, one member nominated by the officer or

teacher concerned, and an umpire appointed by the Chancellor. The decision of the Tribunal shall be final, and no suit shall lie in any Civil Court in respect of the matters decided by the Tribunal. Every such request shall be deemed to be a submission to arbitration upon the terms of this section within the meaning of the Arbitration Act, 1940 (Act X of 1940)—and all the provisions of that Act, with the exception of Section 2 thereof, shall apply accordingly.

45. Pension and provident funds.—(1) The University shall constitute for the benefit of its officers, teachers and other servants such pension and provident funds as it may deem fit in such manner and subject to such conditions as may be prescribed by the Statutes.

(2) Where such a pension or provident fund has been so constituted, the State Government may declare that the provisions of the Provident Funds Act, 1897, shall apply to such fund as if it were a Government Provident Fund.

46. Territorial exercise of powers.—Save as otherwise provided in this Act, the powers of the University conferred by or under this Act shall not extend beyond a radius of ten miles from the Convocation Hall of the University. Notwithstanding anything in any other law for the time being in force, no educational institution beyond that limit shall be associated with or admitted to any privileges of the University, and no educational institution within that limit, save with the sanction of the Chancellor, shall be associated in any way with or seek admission to any privileges of any other University incorporated by law in India, and any such privileges granted by any such other University to any educational institution within that limit prior to the commencement of this Act shall be deemed to be withdrawn on the commencement of this Act :

Provided that, subject to the sanction of the State Government nothing in this section shall apply to any ³⁸[medical, agricultural or technical institution established or maintained by the University or by the State Government.]

Transitory Provisions

47. Completion of courses for students at Lucknow Colleges.—Notwithstanding anything contained in this Act or the Ordinances, any student of King George's Medical College, Canning College, the Lucknow Christian College or the Isabella Thoburn College who, immediately prior to the commencement of this Act, was studying for any examination of the Allahabad University higher than the Intermediate Examination shall be permitted to complete his course in preparation therefor, and the University shall provide for such students instruction and examination in accordance with the Prospectus of Studies of the Allahabad University. Until such examinations be provided, every such student may, notwithstanding anything contained in the Indian Universities Act, 1904, be admitted to the examinations of the Allahabad University.

48. Appointment of first Vice-Chancellor.—The first Vice-Chancellor may be appointed at any time after the passing of this Act. Such appointment shall, notwithstanding anything contained in subsection (1) of Section 10, be made by the Chancellor for a period of not more than five years on such conditions as he thinks fit.

49. First appointments of University staff.—(1) At any time after passing of this Act and until such time as the authorities of the University shall have been duly constituted—

- (a) the Treasurer may be appointed by the Chancellor ;
- (b) any other officers of the University may be appointed by the Vice-Chancellor, with the previous sanction of the Chancellor ;
- (c) teachers of the University shall be appointed by the Chancellor after considering the recommendations of an Advisory Committee consisting of the Vice-Chancellor, the Director of Public Instruction, Uttar Pradesh, and such other person or persons, if any, as the Chancellor thinks fit to associate with them.

(2) Any appointment made under sub-section (1) shall be for such period and on such conditions as the appointing authority thinks fit :

Provided that any such appointment of a person not on the staff of King George's Medical College or Canning College shall be for a period of not more than five years :

Provided further that no such appointment shall be made until financial provision has been made therefor.

50. Extraordinary powers of the Vice-Chancellor.—At any time after the passing of this Act the Vice-Chancellor may, with the previous approval of the Chancellor and subject to financial provision being made therefor, take such action, consistent so far as may be with the provisions of this Act and the Statutes, as he may think necessary for the purpose of bringing the University into being, and for that purpose may exercise any power which by this Act or the Statutes is to be conferred on any officer or authority of the University.

51. Interpretation of references to the Governor of the Uttar Pradesh.—Until a Governor is appointed for the Uttar Pradesh references in this Act to the Governor of the Uttar Pradesh shall be deemed to be references to the Lieutenant-Governor.

TRANSITORY PROVISIONS

(Sections 40 to 43 of U. P. Act VI of 1955 as reproduced below.)

40. Notwithstanding anything contained in the Principal Act, the Statutes or the Ordinances, the term of the Vice-Chancellor and every elected officer or authority of the University, holding office or constituted on the date immediately preceding the commencement of the Lucknow University (Amendment) Act, 1954, (hereinafter called the "Amending Act") shall determine on the appointment, election, or constitution of the corresponding officer or authority, in accordance with the provisions of the Principal Act as amended by the Amending Act.

41. Notwithstanding anything in the Principal Act, or the Amending Act, the Chancellor may at any time after the Amending Act has come into force appoint a person to be Vice-Chancellor and it shall not be necessary for making the appointment to follow the procedure laid down in Section 10. The Vice-Chancellor so appointed shall exercise all the powers and perform all the duties and functions of the Vice-Chancellor under the Principal Act, as amended by the Amending Act, and shall hold office for a period of one year, but the Chancellor may, if it becomes necessary extend the period by one year.

42. (1) At any time after this Act has been first published in the official Gazette, it shall be lawful for the State Government to do anything necessary generally for giving effect to the provisions of the Principal Act as amended by this Act including the constitution of the University authorities, the making of any new Statute or the amending of any Statute and fixing of dates for the coming into force of such Statutes or Amendments.

(2) Every Statute and Amendment made under sub-section (1) shall have the same force and effect as a Statute or Amendment made under and in accordance with Section 28 of the Principal Act.

(3) The powers conferred by sub-section (1) may be exercised as often as occasion requires but not later than eighteen months from the time this Act is first published in the official Gazette.

43. (1) The State Government may, for the purpose of removing any difficulties particularly in relation to the transition from the provisions of the Principal Act, to the provisions of that Act, as amended by the Amending Act, by order published in the official Gazette—

(a) direct that the Principal Act, amended as aforesaid, shall during such period as may be specified in the order take effect subject to such adaptations, whether by way of modification, addition or omission, as it may deem to be necessary or expedient ; or

(b) direct that till such time, not exceeding one year from the commencement of the Amending Act, as the University authorities are constituted or appointed under and in accordance with the Principal Act, amended as aforesaid, the powers, duties and functions, exercisable or dischargeable by such University authorities shall be exercised and discharged by the corresponding authorities established on the date immediately before the commencement of the Amending Act ; or

(c) direct that any Statute, Ordinance or Regulation in force at the date immediately preceding the coming into force of the Amending Act shall continue in force subject to such alteration, modification, addition or omission, as it may deem to be necessary or expedient, until superseded by anything done or any action taken under the Principal Act as amended by the Amending Act ; or

(d) make such other temporary provision for the purpose of removing any such difficulty, as it may deem to be necessary or expedient :

Provided that no such order shall be made after twelve months from the date of the commencement of the Amending Act.

(2) No order made under sub-section (1) shall be questioned in any court of law on the ground that no difficulty as is referred to in the said sub-section existed or required to be removed.

THE SCHEDULE

STATUTES OF THE UNIVERSITY

(New Statutes framed by the Governor and published in U. P. Gazette Extraordinary dated February 9, 1956 as subsequently amended by U. P. Gazette Extraordinary dated August 31, 1956 ; September 4, 1956 and September 21, 1956.)

3. Constitution of Executive Council.—(1) The members of the Executive Council, in addition to the Vice-Chancellor and the Treasurer, shall be—

Class I—Ex officio members

- (i) The [Chief Judge of the Chief Court of Oudh].
- (ii) The Deans of the Faculties.

Class II—Other members

- (i) Six members of the Court, of whom two shall be members of the British Indian Association of Oudh, elected by the Court at its annual meeting.
 - (ii) Two Principals elected by the Principals and one Provost elected by the Provosts.
 - (iii) Two members elected by the Academic Council from its own body.
 - (iv) Four members appointed by the Chancellor.
- (2) Members other than *ex-officio* members shall hold office for a period of three years :

Provided that members elected by the Court or by the Academic Council shall hold office so long only within the said period as they continue to be members of the Court or of the Academic Council respectively.

THE UTTAR PRADESH MATERNITY BENEFIT ACT, 1938

(U. P. Act No. IV of 1938)

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Amended by the Uttar Pradesh Act No. XII of 1939

(Received the assent of Governor on August 2, 1938, and was published under Section 75 of the Government of India Act, 1935, on August 6, 1938).

AN ACT

to regulate the employment of women in factories for some time before and some time after confinement and to provide for the payment of maternity benefit.

Preamble.—Whereas it is expedient to regulate the employment of women in factories for sometime before and some time after confine-

ment and to provide for the payment of maternity benefit to them in the manner hereinafter provided : It is hereby enacted as follows :

Legislative changes :—The words (Uttar Pradesh) and (State) were substituted for the words 'United Provinces' and 'Provincial' by A. O. 1950 throughout the Act.

Prefatory Note :—The following extract from the Statement of Objects and Reasons may be usefully noted :—

"The objects of this Bill are to prohibit the employment of women in those industries the work in which is regulated by law, four weeks after confinement ; to enable them to leave work four weeks before confinement to prevent them from being dismissed from service during the days of such absence from work and to provide them with financial help sufficient to maintain themselves and their children in a healthy condition, during this period.

2. The Bill seeks to give effect to the recommendation of the Royal Commission on Labour in India, that maternity benefit legislation should be enacted. There is no doubt that if women continue their long and arduous work in factories and other organised industries immediately before or after confinement their health and the health of their children will suffer. Again, provision of maternity benefit during the days of enforced absence is necessary, as without such provision mere prevention of work will be a measure of doubtful utility. It is, but fair that the financial burden of the provision of maternity benefit should fall upon industries that employ women with their natural sex disabilities.

3. Several factories which are considerate towards their labourers already grant some such benefits but there are others which do nothing simply because they think there is no obligation laid on them in the matter. Legislation will therefore bring all factories into line with each other. Moreover, as only a small proportion of woman out of the total number of women employed will be eligible for maternity benefits during the course of the year the incidence of burden will be very small"—*Vide*, U. P. Gazette Extraordinary of January 12, 1938.

1. Short title.—This Act may be called the Uttar Pradesh Maternity Benefit Act, 1938.

2. Extent and operations.—(1) This Act extends to the whole of the Uttar Pradesh.

(2) It shall come into force from such date as may be notified by the Governor in this behalf.

Note.—The Act came into force on September 1, 1939 (*vide* Notification No. 377/X-18-239 dated August 7, 1939 in *Gazette* 1939 Part I page 551).

3. Definition.—In this Act, unless there is anything repugnant in the subject or context—

- (a) "Employer" includes an occupier or a manager of a factory or a managing agent or other person authorised to represent the occupier ;
- (b) "Factory" means any premises including the precincts thereof whereon ten or more workers are working or were working on any day of the preceding 12 months and in any part of which a manufacturing process is being carried on with the aid of power or is ordinarily so carried on ;
- (c) "Inspector of Factories" shall mean the person appointed as an inspector under the Factories Act, 1934 ;
- (d) "Labour Commissioner" means the officer appointed by the State Government to discharge the functions of a Labour Commissioner under this Act ;
- (e) "Maternity Benefit" means the amount of money payable under the provisions of this Act to a woman worker in a factory ;
- (f) "Registered Practitioner" means a medical practitioner who is registered under the Uttar Pradesh Medical Act, 1917 ;
- (g) "Seasonal factory" means a factory which is exclusively engaged in one or more of the following manufacturing processes, namely, cotton ginning, cotton or jute pressing,

the decortication of groundnuts, the manufacture of coffee, indigo, lac, rubber, sugar (including *gur*) or tea, or any manufacturing process which is incidental to or connected with any of the aforesaid processes ;

Provided that the State Government may, by notification in the Gazette, declare any such factory in which manufacturing processes are ordinarily carried on for more than one hundred and eighty working days in the year, not to be a seasonal factory for the purposes of this Act ; and may likewise declare any specified factory in which manufacturing processes are ordinarily carried on for not more than one hundred and eighty working days in the year and cannot be carried on except during particular seasons or at times dependent on the irregular action of natural forces, to be a seasonal factory for the purposes of this Act.

- (h) "Wages" includes the money value of any earned grain concession and any money paid to cover high cost of living but does not include a bonus given for regular attendance ;
- (i) "Worker" and "occupier" shall have the same meaning as are assigned to them by the Factory Act, 1934.

4. Employment of or work by women in factories prohibited during certain period.—(1) No employer shall knowingly employ a woman in any factory during the four weeks immediately following the day of her delivery or during the two weeks immediately following the day of her miscarriage.

(2) No woman shall work in any factory during the four weeks immediately following the day of her delivery or during the two weeks immediately following the day of her miscarriage.

5. Right to payment of maternity benefit.—(1) Subject to the provisions of this Act, every woman worker in a factory not being a seasonal factory shall be entitled to the payment of maternity benefit, at the rate of her average daily earnings calculated on the total wages earned on the days when full time work was done during a period of three months immediately preceding the date on which she gives notice under sub-section (1) of Section 6 or at the rate of eight annas a day, whichever is greater, for the actual days of her absence, not exceeding four weeks, during the period immediately preceding her confinement and for the four weeks immediately following her confinement.

(2) The maximum period for which any woman shall be entitled to the payment of maternity benefit shall be eight weeks, that is to say, four weeks up to and including the day of her delivery and four weeks immediately following that day.

If a woman dies during this period the maternity benefit shall be payable only for the days up to and including the day of her death.

(3) A woman worker, who avails herself of the services of a qualified midwife or a trained woman health visitor at the time of her confinement, shall be entitled to a bonus of rupees five, in addition to such other maternity benefit to which she may be entitled.

(4) In case a woman worker in a factory has a miscarriage, she shall be entitled to three weeks' leave from the day of her miscarriage with pay at the rate of her average daily earnings calculated on the total wages earned on the days when full time work was done during

a period of three months immediately preceding the date of such miscarriage.

(5) Maternity benefit shall be payable by the employer in whose factory such woman is employed at the time of giving notice under sub-section (1) of Section 6 :

Provided that no such benefit shall be payable unless the woman claiming it has been employed for a total period of not less than six months immediately preceding the date on which she actually absents herself in accordance with the provisions of sub-section (1) of Section 6, from the factory of such employer or any factory managed by the same managing agent as the factory in which she is employed at the time of giving such notice.

Explanation 1.—It is immaterial whether such woman has been employed for the entire period of six months in the same factory or in several factories, provided that all such factories belong to the same person or are managed by the same managing agent.

Explanation 2.—The period of six months referred to in the proviso may be either continuous or broken by a period or periods of absence on authorised casual or medical leave.

6. Procedure regarding payment of maternity benefit.—

(1) Any woman worker in a factory entitled to maternity benefit under the provisions of this Act, who is pregnant, may on any day, give notice in writing to her employer, stating that she expects to be confined within one month next following the date of notice, that she will absent herself from the factory with effect from a date to be mentioned in the notice, and that she will not work in any employment during the period for which she receives maternity benefit.

(2) A sufficient number of copies of forms of such notices shall be maintained by every employer, and a copy supplied to every woman worker when she is first employed.

(3) An employer shall permit a woman worker to absent herself from the factory for a period of four weeks after the day of her delivery or three weeks after the day of her miscarriage. He shall also, on receipt of the notice referred to in sub-section (1), permit such woman to absent herself from the factory from the date mentioned in the notice till the day of her delivery, provided that the total period of absence before the date of delivery does not exceed two months.

(4) If any woman worker claiming maternity benefit, or some person acting on her behalf, or in case of her death, the person entitled to maternity benefit under Section 7, furnishes the employer of such woman with proof of her delivery within a period of four weeks from the date thereof, the said employer shall, within seventy-two hours of the receipt of such proof, make payment of such sum as may be due to the claimant on account of maternity benefit for any period up to and including the said date, and shall thereafter within seventy-two hours next following the expiry of a period of four weeks from the said date, make payment of any further sum which may be due for the said period or part thereof.

If such proof is furnished after the expiry of a period of four weeks but before the expiry of a period of six months from the date of delivery, the said employer shall within seventy-two hours of the receipt of such proof make payment of any sum which may be due to the claimant on account of maternity benefit.

[*Explanation.*—For the purposes of this sub-section the term “proof”

shall have such meaning as may be ascribed to it by rules made under Section 16 of this Act.]

(5) No claim shall be entertained after six months of the date of delivery.

* * *

7. Payment of maternity benefit in case of a woman's death.—If a woman entitled to maternity benefit under this Act dies during the period for which she is entitled to maternity benefit, the employer shall pay the amount of maternity benefit due, if the newly-born child survives her, to the person who undertakes the care of the child; and if the child does not survive her to her legal representative. In case of doubt the amount may be paid by the employer to the Chief Inspector of Factories who shall pay it to the person who is, in his opinion, entitled thereto.

8. No notice of dismissal to be given to a woman during period of maternity benefit.—(1) When a woman absents herself from work in accordance with the provisions of this Act, it shall not be lawful for her employer to give her notice of dismissal during such absence and any notice of dismissal expiring during such absence shall be inoperative.

(2) If as a result of illness; certified by a registered practitioner, to arise out of pregnancy or confinement or miscarriage, a woman remains absent from work for a longer period than is provided in Section 6 (3), it shall not be lawful for her employer to give her a notice of dismissal or discharge unless her absence exceeds a period of four months.

9. Compensation for dismissal to avoid payment of maternity benefit.—(1) If a woman worker considers that she has been dismissed by her employer in order to avoid the payment of maternity benefit to her, she may, within three months of the date of such dismissal, apply to the Labour Commissioner for compensation.

(2) If an Inspector of Factories considers that a woman worker has been dismissed by her employer in order to avoid the payment of maternity benefit to her, he may within three months of the date of such dismissal, report the matter to the Labour Commissioner.

(3) The Labour Commissioner shall on receipt of an application under sub-section (1) or report under sub-section (2), or may on his own motion within three months of the dismissal of a woman worker, hold an inquiry into the question whether such dismissal was in order to avoid the payment of maternity benefit. He shall give notice to the woman worker and her employer of the date fixed for the inquiry and shall grant them an opportunity to present their respective cases.

(4) If on such inquiry the Labour Commissioner is satisfied that the employer has dismissed the woman worker in order to avoid the payment of maternity benefit to her, he shall direct such employer to pay to such woman a compensation of rupees one hundred or of 180 times her average daily earnings calculated on the total wages earned on the days when full time work was done during a period of three months immediately preceding the date of her dismissal, whichever is greater.

(5) Such compensation shall be recoverable as a fine imposed by a criminal court.

10. Forfeiture of maternity benefit.—If a woman works in any factory after she has been permitted by her employer to absent

herself under the provisions of Section 6 she shall forfeit her claim to the payment of the maternity benefit to which she is entitled.

11. Appointment of health visitor, maintenance of creches for children, additional intervals for rest for women workers who have babies.—(1) Every employer, in whose factory fifty or more women workers are employed or where not less than twenty-five per cent. of the workers employed are women and the number of such women is not less than ten, shall set apart a room in the factory premises which shall be used as a creche for the children of women workers, and employ a female attendant thereat to look after such children and shall also employ either by himself or in combination with other employers a trained woman health visitor for looking after the welfare of the women workers.

(2) A woman worker employed in a factory who has a child of less than one year of age shall be entitled to two intervals for rest of half an hour each, one in the forenoon and the other in the afternoon, at such times as she thinks fit, in addition to the interval of one hour, mentioned in Section 37 of the Factories Act, 1934, provided that in case an employer maintains a creche at the factory in accordance with sub-section (3), the two additional intervals to which the woman worker is entitled will be of a quarter of an hour each.

Explanation.—These additional intervals will count as work and full pay will be payable for the same.

12. Penalty for contravention of the Act by an employer.—

(1) If any employer contravenes the provisions of this Act he shall, on conviction, be liable to a fine which may extend to five hundred rupees for the first offence and rupees one thousand for a second or subsequent offence.

(2) The court may direct that the fine or such portion thereof as it thinks fit, shall be awarded to a woman worker who has been adversely affected by such contravention.

13. Penalty for contravention of the Act by a woman.—If any woman works in any factory within four weeks of the day of her delivery or two weeks of the day of her miscarriage she shall be liable, on conviction, to a fine not exceeding ten rupees.

14. Cognizance of offences.—(1) No prosecution under this Act shall be instituted except by or with the previous sanction of the Chief Inspector of Factories.

(2) No court inferior to that of a magistrate of the first class may try any offence punishable under this Act or any rule made under this Act.

15. Limitations of prosecutions.—No court may take cognizance of any offence punishable under this Act or any rule made under this Act unless complaint thereof is made within six months of the date on which the offence is alleged to have been committed.

16. Rules.—(1) The State Government may make rules for the purpose of carrying into effect the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the preparation and maintenance of a muster-roll or register or a combined muster-roll and register and the particulars to be entered in such muster-roll, register or combined muster-roll and register ;

- (b) the inspection of factories for the purposes of this Act by Inspectors of Factories ;
 - (c) the exercise of powers and performance of duties by Inspectors of Factories for the purposes of this Act ;
 - (d) the method of payment of maternity benefit and the enforcement of such payment, in so far as provision has not been made in this Act ;
 - (e) the nature of the proof required for the payment of bonus under Section 5 (3) ;
 - (f) the form for the notice under Section 6 (1) ;
 - (g) the mode of proof of delivery under Section 6 (4) or of miscarriage under Section 5 (4) ;
 - (h) the maintenance of creches and the employment of female attendants thereat ;
 - (i) the qualifications of the qualified midwife referred to in Section 5 (3) and of the woman health visitor referred to in Sections 5 (3) and 11 (1) ;
 - (j) the calculation of wages payable for the intervals for rest referred to in Section 11 (2) ; and
 - (k) any other matter for which no provision has been made in this Act and for which provision is, in the opinion of the State Government, necessary.
- (3) Any such rule may provide that a contravention thereof shall be punishable with fine which may extend to one hundred rupees.
- (4) The power to make rules under this Act shall be subject to the condition of the previous publication.

17. Copies of this Act and rules thereunder to be exhibited.—An abstract in the local vernacular of the provisions of this Act and the rules made thereunder shall be exhibited by the employer in every factory in which women are employed in such manner that they may come to the notice of every woman employed therein.

18. Determination of disputes under the Act.—All disputes arising out of a claim to maternity benefit under this Act shall be disposed of by the Chief Inspector of Factories, whose decision shall, subject to revision by the Labour Commissioner, be final and shall not be questioned in any Civil Court.

19. Application of Act to Government Factories.—The provisions of this Act shall apply to factories belonging to the Government situate in the Uttar Pradesh.

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RULES MADE UNDER U. P. MATERNITY BENEFIT ACT, 1938

Industries Department, Miscellaneous, 20th July 1938, No. 3774/XVIII—239-33.—In exercise of the powers conferred by sub-section 1 of Section 16 of the Uttar Pradesh Maternity Benefit Act, 1938 (IV of 1938), the Governor is pleased to make the following rules, the same having been previously published as required by sub-section (4) of Section 16 of the said Act, namely ;

1. Short title.—These rules may be called the Uttar Pradesh Maternity Benefit Rules, 1939.

2. Definition.—In these rules unless there is anything repugnant in the subject or context—

- (a) "The Act" means the Uttar Pradesh Maternity Benefit Act, 1938.
- (b) "Inspector" means an inspector of factories appointed under sub-section (1) of Section 10 of the Indian Factories Act, 1934, the Chief Inspector, and *ex-officio* inspector and an additional inspector appointed under sub-sections (2), (4) and (5) respectively of the said section.
- (c) "Muster roll" means a muster roll maintained under rule 10 and includes a register kept or deemed to have been kept under Section 41 of the Indian Factories Act, 1914.

3. Form of notice under Section 6 (1).—The notice referred to in Section 6 (1) shall be in form A appended to these rules.

4. Proof.—(1) The fact that a woman worker has been confined or has had a miscarriage or is dead shall be proved by the production either of a certificate to that effect from a registered practitioner or from the Honorary Secretary of the Local Red Cross Society (if the case was attended by the Red Cross Maternity Staff), or of a certified copy of an extract from a birth and death register, maintained under the provisions of any law, as the case may be.

(2) The fact that a woman worker has availed herself of the services of a qualified midwife or a trained woman health visitor at the time of her confinement to entitle her to the bonus under Section 5 (3) of the Act shall be proved by the production of a certificate to that effect either from the Honorary Secretary, Local Red Cross Society, or from a local registered practitioner or a trained woman health visitor concerned or from a registered practitioner.

(3) A midwife or health visitor qualified from the State Medical Faculty, Uttar Pradesh or the Lady Reading Health School, Delhi, or having equivalent certificate or diploma recognized by the Government shall be considered qualified for purposes of the Act and these rules.

5. Payment of Maternity benefit.—(1) Payments against a claim of maternity benefit shall be made by the employer to the woman worker concerned, or to a person nominated by her in writing, or acting on her behalf, or in case of her death to the person entitled to it under Section 7 of the Act.

In case of doubt the amount may be paid by the employer to the Chief Inspector of Factories who shall pay it to the person who, in his opinion, is entitled to receive it.

(2) Whenever the payment referred to in sub-rule (1) is made, a receipt shall be obtained by the employer from the person to whom the payment is made in form B appended to these rules. Where the amount has been paid to the Chief Inspector of Factory, the receipt shall be supplied to the employer by the Chief Inspector of Factories.

6. Maternity benefit payable even after the closing of the factory.—A woman worker who has given notice in accordance with Section 6 (1) shall be entitled to receive maternity benefit even if the factory in which she was employed has closed down after the receipt of such notice and before payment of the maternity benefit.

7. Return to be submitted to the Chief Inspector.—Every employer of women workers in a factory not being a seasonal factory, shall furnish to the Chief Inspector of Factories by the 15th of January in each year an annual return in duplicate in form C appended to these rules, for the year ending the 31st December immediately preceding.

8. Records.—Records relating to the payment of maternity benefit under the provisions of the Act or these rules shall be preserved for a period of two years from the date of their preparation.

9. Display of Act and rules.—An abstract of the Act and rules in the local vernacular required to be exhibited in accordance with Section 17 of the Act shall contain such provisions of the same and be in such form as the Chief Inspector of Factories may approve and shall be exhibited in such manner as he may direct. The Chief Inspector of Factories shall prepare and have printed such an abstract and supply copies to employers who apply for the same and make such payment as he may prescribe.

10. Muster roll.—Every employer of women workers in a factory, not being a seasonal factory, shall prepare and maintain a muster roll and shall enter the following particulars in such muster roll, namely :

- (a) Name of woman worker, together with the name of her father or husband ;
- (b) department in which employed ;
- (c) ticket or departmental number ;
- (d) dates with month and year on which employed and not employed, the date of admission to employment and the date of discharge, if any being clearly indicated ;
- (e) total days employed when full-time work was done ;
- (f) (i) the wages as defined in Section 3 (a) of the Act earned when full-time work was done ;
- (ii) the average daily earnings calculated to the nearer quarter of an anna on the total wages earned on the days when full-time work was done during the period of three months immediately preceding the date on which the woman gives notice under Section 6 (1) of the Act ;
- (g) date on which the woman worker gives notice under Section 6 (1) of the Act ;
- (h) date of confinement or miscarriage ;
- (i) date of production of the certified copy of an extract from a birth register or of a certificate under rule 4 (i) as to the date of the confinement or miscarriage ;
- (j) date of production of a certificate under rule 4 (1) or of a certified copy of an extract from the death register as to the death of a woman worker ;
- (k) date with the name of the payee and the amount of payment of first instalment of maternity benefit ;
- (l) dates with the names of the payees and the amounts of subsequent instalments benefit ;
- (m) date of payment of bonus, if any, under Section 5 (3) of the Act with the name of the payee ;
- (n) if the woman worker dies, the name of the person to whom maternity benefit was paid, the amount thereof and the date of payment ; and
- (o) remarks column for the use of the Inspector.

(2) All entries in the muster roll shall be maintained up to date and the Inspector may inspect it on the premises at any time during the working hours of the factory.

(3) The employer may enter in the muster roll such other particulars as he may wish for any other purpose.

11. Creche.—The occupier of every factory in which fifty or more

women workers are employed or where not less than 25 per cent of the workers employed are women and the number of such women is not less than ten, shall provide and reserve a room or rooms for the use of children under the age of six years belonging to such women, and such room or rooms shall conform to the following standard ;

- (i) The construction shall be strong and rigid and a suitable heat resisting material for covering the roof and the sides (if any) shall be used. The corrugated iron sheeting or other metal shall not be used for covering the roof unless it is covered or lined with suitable heat resisting materials :

Provided that no heat resisting material shall be necessary for any construction made of masonry work.

- (ii) They shall be adequately lighted and ventilated and give effective protection from the weather, and where necessary, provided with fans.
- (iii) The floor shall be raised above the surrounding ground level and shall be kept dry and in a clean state.
- (iv) Lavatory accommodation, washing facilities and sufficient supply of drinking water shall be provided. Sanitary utensils shall be provided to the satisfaction of the Inspector. The service of a sweeper at frequent interval shall be available to attend to general cleanliness of the room.
- (v) Cradles or suitable cots shall be provided for the use of each child to be accommodated and the same maintained in a good state.
- (vi) The height of the rooms shall not be less than 12 feet from the floor level to the lowest part of the roof and the size shall be suitable to provide at least 500 cubic feet for each child to be accommodated.
- (vii) A trained female attendant, preferably a duly qualified nurse, shall be placed in charge of such rooms and suitable arrangements shall be made for the care of and attention to the children who use them.
- (viii) Such room or rooms shall be effectively separated from those used by worker and the use of such room or rooms shall be restricted to children, their attendants and the mother of the children.
- (ix) Such room or rooms shall be constructed in accordance with a plan to be approved by the Chief Inspector of Factories and Boilers, Uttar Pradesh. The existing building or buildings of the factory may be utilized for the purpose provided the same conform to the standards laid down in this rule.

12. No deduction for additional interval of rest under Section 11 (2).—No deduction from the normal and usual daily wages of a woman worker employed in a factory who has a child of less than one year of age shall be made in respect of the two additional intervals of rest to which she is entitled under Section 11 (2) of the Act.

13. Inspector's duties and powers.—(1) Every inspector shall be responsible for the due observance of the Act and the rules made thereunder within the area assigned to him.

(2) Every inspector shall have power within the local limits of his jurisdiction—

- (a) to require the production of, and to examine, the muster roll and other records maintained in the factory under the Act or these rules.
- (b) to make such inquiries and to require the production of such papers or documents as may be necessary for the purpose of ascertaining whether the provisions of the Act and of these rules have been or are properly carried out in factory.

(3) Every notice given under sub-section (1) of Section 6 of the Act and every receipt for maternity benefit paid to any person under the provisions of the Act or of these rules shall, on demand, be produced before the Inspector.

(4) Without prejudice to the generality of sub-rule (1), an Inspector shall at each inspection of a factory see—

- (a) whether due action has been taken on every notice given under sub-section (1) of Section 6 of the Act ;
- (b) whether the muster roll prescribed by rule 10 is correctly maintained ;
- (c) whether the amounts of maternity benefit have been correctly calculated ;
- (d) whether there have been any cases of notices of dismissal in contravention of Section 8 of the Act since the last inspection ;
- (e) whether Sections 4, 11 and 17 of the Act have been complied with ;
- (f) whether rules 11 and 12 of these rules have been complied with ;
- (g) whether the return (form C) submitted to the Chief Inspector of Factories was correctly drawn up by the employer.

(5) The Inspector shall make a note of every inspection in the inspection report specified in rule 5 or 6 of the Uttar Pradesh Factories Rules, 1935, as the case may be.

(6) An Inspector of factories shall issue orders in writing to the employer asking for the correction of all irregularities against the Act or these rules noticed by him, and shall institute prosecutions for breaches of law, whenever deemed necessary, only after consulting the Chief Inspector of Factories and having obtained the sanction required under Section 14 (1) of the Act.

(7) An Inspector of factories shall keep a file of the record of his inspection and shall indicate in the diary maintained under rule 7 of the Uttar Pradesh Factories Rules, 1935, the work done by him under the Act.

14. Penalty.—(1) If any employer contravenes the provisions of these rules he shall be liable, on conviction, to a fine not exceeding one hundred rupees.

(2) Any person who (a) wilfully obstructs an inspector in the exercise of his powers or the performance of his duties, or (b) fails to produce on demand the muster roll or notice given under Section 6 (1) of the Act or the receipts for maternity benefits or any other paper or document necessary to enable the Inspector to ascertain that the provisions of the Act and these rules have been complied with, shall be liable, on conviction, to a fine not exceeding fifty rupees.

FORM A

NOTICE UNDER SECTION 6 (1) OF THE UTTAR PRADESH MATERNITY BENEFITS ACT, 1938

(See rule 3)

Name of employer.....

I,.....wife....., a woman worker
daughter of

in the.....factory, hereby give notice to my employer that I
expect to be confined within one month from today, that I will absent
myself from the factory with effect from.....and that I
shall not work in any employment during the period for which I receive
maternity benefit.

(Sd.).....

Date.....

FORM B

FORM OF RECEIPT FOR MATERNITY BENEFIT

[See rule 5 (2)]

Name of factory.....

the woman worker

the nominee of.....woman worker

I....the undersigned* acting on behalf of.....woman worker
legal representative of.....women worker deceased

in.....factory at.....in.....district
received maternity benefit under the Uttar Pradesh Maternity Benefit
Act, 1938, from the employer of the factory referred to above, as detailed
below :

*Rs....being the first instalment after the confinement paid on....

Rs....being the second instalment after the confinement paid on..

Rs....being the third instalment after the confinement paid on...

Rs. five being the bonus under sub-section (3) of Section 5 of the
Act paid on.....

My

*—confinement took place on.....In consequence I.....

Her

.....'s death

her nominee, or acting on her behalf

being*—have received the aforesaid amounts

her legal representative

prescribed in Sections 5 and 7 of the Uttar Pradesh Maternity Benefit
Act, 1938.

Women worker

the nominee or the person acting

*Signature or left thumb-impression of.....*on behalf of the woman worker*

the legal representative

of the woman worker

Date.....

*Note.—The unnecessary portion in this form should be struck off when filling in
it.

FORM C

RETURN TO BE SUBMITTED TO THE CHIEF INSPECTOR OF FACTORIES
ON OR BEFORE THE 15TH DAY OF JANUARY

(See rule 7)

1. Name of factory.....
2. Name of occupier.....
3. Name of Manager.....
4. Year ending 31st December, 19.....
5. Average number of women employed daily.....
6. Whether the occupier maintains a creche.....
7. Number of women who claimed maternity benefit under Section 6 (1) of the Act.....
8. Number of women who forfeited their claim to the payment of the maternity benefit to which they were entitled
9. Name of women who were paid maternity benefit for actual births.....
10. Number of women who were paid maternity benefit for miscarriages under Section 6 (4).....
11. Number of women who were paid bonus under Section 5 (3).....
12. Number of guardians of child or legal representatives who were paid maternity benefit on the death of woman worker (Section 7)..
13. Total amount of maternity benefit and bonus paid.....

Signature.....

Employer.

Address.....

Date.....

THE UNITED PROVINCES MEDICAL ACT, 1917

(U. P. ACT No. III OF 1917)

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The Schedule.

(Received the assent of the Lieutenant-Governor on the 21st May, 1917, and of the Governor-General on the 19th July, 1917, and was published¹ under Section 81 of the Government of India Act, 1915, on the 4th August, 1917.)

AN ACT

to provide for the Registration of certain Medical Practitioners in the United Provinces.

Preamble.—Whereas it is expedient to provide for the registration of certain medical practitioners in the United Provinces: It is hereby enacted as follows:

Prefatory Note:—For S. O. R. see Gaz., 1916, Pt. VII, p. 28; for R. S. Com., see *ibid*, 1916, Pt. VII, p. 69; and *ibid*, 1917, Pt. VII, p. 5; and for Proceedings in Council, see *ibid*, 1916, Pt. VII, pp. 52 and 709, and *ibid*, 1917, p. 581.

Preliminary

1. Short title, extent and commencement.—(1) This Act may be called the United Provinces Medical Act, 1917.

(2) [It shall extend to the whole of Uttar Pradesh².

(3) Sections 30 and 32 shall not come into force until a date to be appointed in this behalf by the [State Government]⁴ by notification in the [Official Gazette]⁵.

The Act has been extended to the merged state of Rampur by the Rampur (Application of Laws) Act, 1950, w. e. f. Dec. 30, 1949 and to the merged states of Banaras and Tehri-Garhwal by the Banaras (Application of Laws) Order, 1949 and Tehri-Garhwal (Application of Laws) Order, 1949, are for Nov. 30, 1949.

2. Definitions.—In this Act—

(a) the expression “the Medical Acts” means the Medical Act, 1858, and the Acts amending the same;

(b) the expression “the Council” means the Council established under Section 3; and

(c) the expression “registered practitioner” means a person registered under the provisions of this Act.

The Uttar Pradesh Medical Council

3. Establishment of the Uttar Pradesh Medical Council.—A Council shall be established and called “[Uttar Pradesh]⁶ Medical Council;” and such Council shall be a body corporate and have perpetual succession and a common seal and shall by the said name sue and be sued⁷.

1. See Gaz., 1917, Pt. VII, p. 875.

2. Subs. for sub-sec. (2) of s. 1 by the A. O. 1950.

3. S. 30 was brought into force from Jan. 1, 1919, see not. no. 165/V—19, d. April 2, 1918, in Gaz., 1918, Pt. I, p. 289, and s. 32 from Sept. 19, 1941, see not. no. N—161/V—601, d. Sept. 19, 1941, in Gaz., 1941, Pt. I, p. 442.

4. Subs. by the A. O. 1950 for [Provl. Govt.] which had been subs. by the A. O. 1937 for [L. G.].

5. Subs. for “Gazette” by A. O. 1937.

6. Subs. by the A. O. 1950 for [the United Provinces].

7. For fixing the common seal of the Council, see not. no. 57, d. March 7, 1918, in Supplement to Gaz., d. March 9, 1918, Pt. I, p. 12.

4. Constitution of Council.—(1) The said Council shall consist of thirteen³ members appointed in the following manner, namely :

- (a) a president to be nominated by the [State Government]⁴;
- (b) five members to be nominated by the [State Government]⁴;
- ⁵(c) one member to be elected by the Executive Council of the Lucknow University;
- (d) one member to be elected by medical practitioners who—
 - (i) are registered under the Medical Acts, or are doctors, bachelors or licentiates of medicine, or masters of obstetrics, or masters, bachelors or licentiates of surgery of the Universities of Calcutta, Bombay, Madras or Lahore,
 - (ii) are residing in [Uttar Pradesh]¹ and registered under this Act or, in the case of the first election, qualified to be so registered, and
 - (iii) are in the ⁶[service of the (Government).]⁷
- (e) two members to be elected by medical practitioners who are not in the ¹[service of the (Government)]² but are otherwise qualified in the manner prescribed in clause (d);
- (f) one member to be elected by medical practitioners who, not being qualified in the manner prescribed in sub-clause (1) of clause (d),—
 - (i) are residing in [Uttar Pradesh]³ and registered under this Act or, in the case of the first election, qualified to be so registered, and
 - (ii) are in the ¹[service of the (Government)]².
- (g) [two members]⁴ to be elected by medical practitioners who are not in the ¹[service of the (Government)]² but are otherwise qualified in the manner prescribed in clause (f);
- (h) one member to be elected by the medical graduates of the [Universities of Allahabad and Lucknow]⁵.

(2) Provided that upon the expiry of five years from the commencement of this Act, two members instead of one shall be elected by the medical graduates of the [Universities of Allahabad and Lucknow]⁶ and thereafter the said Council shall consist of [fifteen]⁷ members instead of [fourteen]⁸.

5. Nomination of members in default of election.—If any electoral body referred to in Section 4 does not, in the case of a vacancy referred to in Section 10, within three months and in any other case, by such date as may be prescribed by rule made in that behalf under Section 34 (2) (a), elect a person to be a member of the Council, the

3. The number of members has now risen to fifteen (vide *subs.* S. 2 of this section).

4. *Subs.* by the A. O. 1950 for [Provl. Govt.] which had been *subs.* by the A. O. 1937 for [L. G.].

5. Cl. (c) was *del.* by s. 2 (1) of U. P. Act IV of 1931, and this cl. which was *ins.* as cl. (d) by S. 2 (1) of U. P. Act V of 1922 was numbered as cl. (c) by S. 2 (2) of the former Act.

6. *Subs.* by the A. O. 1937 for [Service of Govt.].

7. *Subs.* by the A. O. 1950 for [Crown].

1. *Subs.* by the A. O. 1937 for [Service of Govt.].

2. *Subs.* by the A. O. 1950 for [Crown].

3. *Subs.* by the A. O. 1950 for the [United Provinces].

4. *Subs.* for "one member" by S. 2 (3) of U. P. Act IV of 1931.

5. *Subs.* for "University of Allahabad" by S. 2 (2) of U. P. Act V of 1922.

6. *Subs.* for "Allahabad University" by S. 2 (3) of *ibid.*

7. *Subs.* for "fourteen" by *ibid.*

8. *Subs.* for "thirteen" by *ibid.*

[State Government]⁹ shall nominate a member in his place, and a person so nominated shall be deemed to be a member as if he had been duly elected by such body.

6. Disqualifications for membership.—(1) A person shall be disqualified for being elected or nominated a member of the Council if he—

- (a) is not registered under this Act ;
- (b) has been sentenced by a criminal court to imprisonment for an offence punishable with imprisonment for a term exceeding six months or to transportation, such sentence not having subsequently been reversed or remitted, and such person's disqualification on account of such sentence not having been remitted by an order which the [State Government]¹ is hereby empowered to make, if it thinks fit, in this behalf ;
- (c) is an undischarged insolvent ; or
- (d) has been adjudged by a competent court to be of unsound mind.

(2) Provided that, in the case of first elections held and first nominations made under this Act, clause (a) of sub-section (1) shall be read as if it were "is not qualified to be registered under this Act."

7. Publication of names of members.—The name of every person elected or nominated a member of the Council shall be published by the [State Government]¹ in the [Official Gazette]².

8. Leave of absence to members.—The Council may permit a member to absent himself from meetings of the Council for a period not exceeding six months.

9. Occurrence of casual vacancies.—(1) A member³ of the Council shall be deemed to have vacated his seat who—

- (a) fails to accept office within one month of the date of his nomination or election, or
- (b) is absent without excuse sufficient in the opinion of the Council from three consecutive meetings of the Council, or
- (c) is absent out of India for a period exceeding six consecutive months, or
- (d) becomes subject to any of the disabilities set forth in Section 6.

(2) On the occurrence of a vacancy referred to in sub-section (1), the president shall forthwith report the fact of such vacancy to the [State Government]¹.

10. Filling of casual vacancies.—If a member of the Council dies or resigns his membership, or ceases to be a member, as provided in Section 9 (1), the vacancy shall be filled within three months by a fresh election or nomination, as the case may be.

11. Term of office of members.—(1) The term of office of

9. Subs. by the A. O. 1950 for [Provl. Govt.] which had been subs. by the A. O. 1937, for [L. G.].

1. Subs. by the A. O. 1950 for [Provl. Govt.] which had been subs. by the A. O. 1937, for [L. G.].

2. Subs. for "Gazette" by the A. O. 1937.

3. For appointment of members of the Council, see not. no. 57, d. March 7, 1918, in Supplement to Gaz. d. March 9, 1918, Pt. I, p. 12.

a member of the Council shall be three years from the date of his acceptance of office.

(2) A person ceasing to be a member by reason of the expiration of his term of office shall, if not disqualified for any of the reasons mentioned in Section 6, be eligible for re-election or re-nomination.

12. Quorum and voting.—(1) No business shall be transacted at a meeting of the Council unless a quorum of six members be present.

(2) Save as otherwise provided in Section 26 (1) (b), all questions arising at a meeting shall be decided by the votes of the majority of the members present and voting, or, in the case of an equality of votes, by the casting vote of the president, or, in his absence, of the member presiding at the meeting.

(3) No act or proceeding of the Council shall be deemed invalid merely by reason of a vacancy in the Council or of a defect in the election or nomination of a person acting as a member of the Council.

13. Regulations as to meetings.—(1) Subject to the provisions of this Act and of any rules made by the [State Government]¹ under this Act the Council may make regulations² in respect of—

- (a) the times and places at which the meetings shall be held ;
- (b) the issue of notices convening such meetings ; and
- (c) the conduct of business thereat.

(2) Until such time as the regulations referred to in sub-section (1) have come into operation, it shall be lawful for the president to summon a meeting at such time and place as to him shall seem expedient, by letter addressed to each member.

14. Payment of expenses to members.—There shall be paid to the members of the Council such expenses as may from time to time be prescribed by regulation under Section 34 (3) (a).

15. Appointment of registrar and other officers.—(1) With the previous sanction of the [State Government]¹, the Council—

- (a) shall appoint a registrar;³
- (b) may grant leave to such registrar and appoint a person to act in his place ; and
- (c) shall pay to the registrar and to the person (if any) appointed to act in his place such salary and such allowances (if any) as the Council may determine.

(2) The Council may appoint such other officers and such clerks¹ and servants as it may consider necessary for the purposes of this Act, and shall pay them such salary and such allowances (if any) as the Council may determine.

(3) The registrar shall act as secretary to the Council.

(4) Every person appointed under sub-sections (1) and (2) shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code.

1. Subs. by the A. O. 1950 for [Provl. Govt.] which had been subs. by the A. O. 1937 for [L. G.].

2. For regulations, see not. no. 52, d. March 7, 1918, no. 49, d. Jan. 20, 1922, and no. 271, d. April 8, 1926, published in supplement to *Gaz.*, d. March 9, 1918, Pt. 1, p. 1, *Gaz.*, 1922, Pt. I, p. 150, and *ibid*, 1926, Pt. I, p. 310, respectively.

3. For rules with respect to the registrar, clerks and servants, see not. no. 57, d. March 7, 1918, published in supplement to *Gaz.* d. March 9 1918, Pt. 1, p. 12, and no. 1059/4-A-3, d. Feb. 28, 1936, in *Gaz.* 1936, Pt. I, p. 305.

1. See footnote (3) on the previous page.

*The Register of Medical Practitioners***16. Orders by Council for maintenance of register.**—(1)

The Council shall, as soon as conveniently may be after the commencement of this Act, and from time to time as occasion may require, make orders for regulating the maintenance of the register of medical practitioners.

(2) The said register shall be kept in such form as may be prescribed by rule made under Section 34(2) (b).

17. Registrar's functions in respect of register.—(1) The

Registrar shall keep the register of medical practitioners in accordance with the provisions of this Act and of any orders made by the Council, and shall from time to time make all necessary alterations in the registered addresses or appointments, and the registered qualifications or titles, of the practitioners entered therein and erase the names of any practitioners who have died or have permanently ceased to practise in India.

(2) To enable the Registrar to fulfil the duties imposed upon him by sub-section (1), he may send through the post a letter to any registered practitioner, addressed to him according to his registered address or appointment, to inquire whether he has ceased to practise or whether his residence or appointment has been changed; and, if no answer to any such letter is received within a period of six months from its despatch, the Registrar may erase the name of such registered practitioner from the register:

Provided that any name erased under this sub-section may be re-entered in the register under the direction of the Council.

18. Persons entitled to be registered.—(1) Every person referred to in the schedule shall, subject to the provisions hereinafter contained, and on payment of such fees as may be prescribed in this behalf by regulations made under Section 34 (3) (b), be entitled to have his name entered in the register of medical practitioners.

(2) Provided that the Registrar shall refer to the Council any application for entry in the register from a person in respect of whom he considers that the Council may wish to proceed under Section 26 (1).

(3) Provided also that the Registrar, if so directed by the Council, shall refuse to register the name of any person who holds a medical degree, diploma, or certificate granted in any foreign country or British colony which does not recognize the medical degrees, diplomas or certificates of the Universities or [State Government]¹ of [India].²

19. Amendment of schedule.—If the Council is satisfied—

- (a) that a title granted or qualification certified by a University, Medical Corporation, examining body or other institution is a sufficient guarantee that persons holding such title or qualification possess the knowledge and skill requisite for efficient practice of medicine, surgery and midwifery, or
- (b) that a title or qualification referred to in Article 3 of the schedule is not a sufficient guarantee as aforesaid,

it may make a report to that effect to the [State Government]¹ which may, if it thinks, fit, thereupon direct, by notification in the [Official Gazette]³,

1. Subs. by the A. O. 1950 for [Provl. Govt.] which had been subs. by the A. O. 1937 for [L. G.].

2. Subs. by the A. O. 1950 for [British India].

3. Subs. for "Gazette" by the A. O. 1937.

(1) in case (a), that the possession of such title or qualification shall, subject to the provisions hereinafter contained, and on payment of such fee as may be prescribed in this behalf by regulation made under Section 34(3) (b), entitle a person to have his name entered in the register of medical practitioners, or

(2) in case (b), that the possession of such title or qualification shall not entitle a person to have his name entered in the said register; and the schedule shall thereupon be deemed to be altered accordingly.⁴

20. power of Council to call for information from medical college or school.—The Council shall have power to call on the governing body or authorities of a medical college or school other than a college or school affiliated to the University of Allahabad * * * ¹ Calcutta, Bombay, or Madras, included in or desirous of being included in the schedule—

(a) to furnish such reports, returns, or other information as the Council may require to enable it to judge of the efficiency of the instruction given therein in medicine, surgery, and midwifery; and

(b) to provide facilities to enable a member of the Council deputed by the Council in this behalf to be present at the examinations held by such college or school.

21. Information required of applicant for registration.—Every person who applies to have his name entered in the register of medical practitioners—

(a) must satisfy the Registrar that he is possessed of some title or qualification referred to in the schedule, as altered by notifications (if any) issued under Section 19; and

(b) if he is registered under the Medical Acts,—

(i) must correctly inform the Registrar of the date of such registration, and

(ii) must furnish the Registrar with a correct statement of the titles or qualifications in respect of which he is so registered, and of the dates on which he obtained them, or

(c) if he is not registered under the Medical Act, must correctly inform the Registrar of the dates on which he obtained the titles or qualifications which entitle him to claim registration under this Act, and

(d) give the Registrar any information which he reasonably may require for the purpose of discharging his duties under this Act.

22. Entry of new titles and qualifications in register.—If a person whose name is entered in the register of medical practitioners obtains any title or qualification other than the title or qualification in respect of which he has been registered, he shall, on payment of such fee as may be prescribed in this behalf by regulation made under Section 34 (3) (b), be entitled to have an entry stating such other title or qualifica-

4. For recognition of degrees, *see* notes, no. 1398/V—122, d. Dec. 27, 1923, no. 750/V—163, d. April 24, 1933, & no. 2911/V—397, d. Jan. 16, 1935, published in *Gaz.*, 1923, Pt. I, p. 1922 *ibid* 1930, Pt. I, p. 339, and *ibid*, 1935, Pt. I, p. 160, respectively, and no. 67/V—210, d. Jan. 29, 1930, no. 2486/V—397, d. Jan.

20, 1933, no. 2440/V—621, d. Jan. 28, 1937 & no. 2442/V—621, d. Jan. 28, 1937, in *Gaz.*, 1920, Pt. I, p. 207, *ibid*, 1933, Pt. I, p. 86, *ibid*, 1937, Pt. I, p. 201, and *ibid*, 1937 Pt. I, p. 201 respectively.

1. The word (Lahore) *omit.* by the A. O. 1950.

tion made against his name in the register, either in substitution for, or in addition to, any entry previously made.

23. Disposal of fees.—All fees received by the Council under this Act shall be applied for the purposes of this Act, in accordance with such rules as may be made by the [State Government]² under Section 34 (2) (c).

24. Appeal to Council from decision of Registrar.—If a person is dissatisfied with a decision of the Registrar, refusing to enter any title or qualification of such person in the register of medical practitioners, he may at any time within three months from the date of such decision, appeal to the Council.

25. Erasure of fraudulent and incorrect entries.—Any entry in the register of medical practitioners, which is proved to the satisfaction of the Council to have been fraudulently or incorrectly made, may be erased under an order in writing of the Council, after notice has been given to the person concerned and his objections (if any) have been considered.

26. Power of Council to prohibit entry in, or to direct removal from the register, etc.—(1) The Council may, upon reference from the Registrar or otherwise, prohibit the entry in, or order the removal from, the register of the name of any medical practitioner—

(a) who has been sentenced by a Criminal Court to imprisonment for an offence indicating in the opinion of the Council such a defect in character as would render the entry or continuance of his name in the register undesirable, or

(b) whom the Council after inquiry (at which an opportunity has been given to him to be heard in his defence and to appear either in person or by counsel, vakil, pleader or attorney, and which may in the discretion of the Council, be held in camera) has found guilty by a majority of two-thirds of the members present and voting at the meeting of infamous conduct in any professional respect¹.

(2) Nothing in sub-section (1) shall be deemed to justify the exclusion or removal from the register of the name of any medical practitioner on the ground of his adoption of a theory of medicine and surgery not in accordance with the accepted view for the time being or of his association with a vaid, hakim, or homoeopath or an unregistered practitioner, so long as that unregistered practitioner—

(a) is possessed of one of the qualifications specified in the schedule, and

(b) is not a person whose name he has reason to believe has been excluded or removed from the register by the Council under sub-section (1) or would be so excluded if application for registration thereof were made.

(3) The Council may direct that the name of any person against whom an order has been made under sub-section (1) shall be entered or re-entered as the case may be².

2. Subs. by *ibid.* for [Provl. Govt.] which had been subs. by the A. O. 1937 for [L. G.].

1. See not. no. 323, d. March 28, 1923, in *Gaz.*, 1923, Pt. I, p. 366.

2. For rules re. restoration of names, see not. no. 53, d. March 7, 1918, in Supplement to *Gaz.*, d. March 9, 1918, Pt. I, p. 5.

27. Appeal to State Government from decision of Council.—(1) An appeal shall lie to the [State Government]¹ from every decision of the Council under Section 24 or 26.

(2) Every appeal under sub-section (1) shall be preferred within three months from the date of such decision.

28. Bar to suits and other legal proceedings.—No suit or other legal proceeding shall lie in respect of an act done in the exercise of a power conferred by this Act on the [State Government]¹ or the Council or the Registrar.

29. Notice of deaths, and erasure of names from register.—(1) Every Registrar of deaths who receives notice of the death of a person whose name he knows to be entered in the register of medical practitioners shall forthwith transmit by post to the Registrar of the Council a certificate of such death, signed by him and stating particulars of the time and place of death.

(2) On receipt of such certificate or other reliable information regarding such death, the Registrar of the Council shall erase the name of the deceased person from the register.

30. Penalty on unregistered persons representing that he is registered.—If a person whose name is not entered in the register of medical practitioners falsely pretends that it is so entered or uses in connection with his name or title any words or letters representing that his name is so entered, he shall, whether any person is actually deceived by such representation or not, be punishable, on conviction by a magistrate of the first class, with fine which may extend to three hundred rupees.

31. Procedure in inquiries and appeals.—For the purpose of any inquiry held under Section 26, or of any appeal under Section 24, the Council shall be deemed to be a court within the meaning of the Indian Evidence Act, 1872, and shall exercise the powers of a Commissioner appointed under the Public Servants (Inquiries) Act, 1850; and every such inquiry and appeal shall be conducted, as far as may be, in accordance with the provisions of Section 5 and Sections 8 to 10 of the said Public Servants (Inquiries) Act, 1850.

32. Reservation of certain appointments to registered practitioners.—Except with the general or special sanction of the [State Government]¹ or of any officer authorized by it in this behalf, no person other than a registered practitioner shall be competent to hold an appointment as medical officer of health, or as physician, surgeon or other medical officer in a hospital, asylum, infirmary, dispensary, or lying in hospital, not being an institution avowedly maintained for the purpose of medical treatment according to the homoeopathic, Ayurvedic or Unani system, which is supported partially or entirely by public or local funds.

Annual Medical List

33. Publication of, and presumption as to entries in, Annual Medical List.—(1) The Registrar shall, in every year, on or before a date to be fixed in this behalf by the Council, causes to be printed and published a correct list of the names for the time being entered in the register of medical practitioners, and setting forth—

1. Subs. by the A. O. 1950 for [Provl. Govt.] which had been subs.

by the A. O. 1937 for [L. G.].

- (a) all names entered in the register arranged in alphabetical order according to the surnames;
- (b) the registered address or appointment of each person whose name is entered in the register; and
- (c) the registered titles and qualifications of each such person, and the date on which each such title was granted or each such qualification was certified.

(2) Every court shall presume that a person whose name is entered in the latest of such lists is duly registered under this Act, and that a person whose name is not so entered is not registered under this Act :

Provided that, in the case of a person whose name does not appear in such list, a certified copy signed by the Registrar, of the entry of the name of such person in the register of medical practitioners shall be evidence that such person is registered under this Act.

Rules and Regulations

34. Rules and Regulations.—(1) The [State Government]¹ may, after previous publication, from time to time make rules consistent with this Act to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, the [State Government]¹ may make rules—

- (a) to regulate elections under this Act ; ²
- (b) to prescribe the form of the register of medical practitioners to be maintained under this Act ; ¹
- (c) to regulate the application of fees ; ²
- (d) to regulate the procedure to be followed by the Council in—
 - (i) conducting any inquiry under Section 26 ; ³ and
 - (ii) disposing of appeals from the decision of the Registrar preferred under Section 24 ⁴.

(3) In addition to the power conferred by Section 13 the Council may, with the previous sanction of the [State Government],⁵ make regulations—

- (a) to prescribe the expenses payable to members of the

1. Subs. by the A. O. 1950 for [Provl. Govt.] which had been subs. by the A. O. 1937 for [L. G.]

2. For rules under this cl. see nots. no. 513C, d. Aug. 6, 1917, no. 261/V—59, d. Oct. 18, 1917, no. 2285/V—343, d. Sept. 21, 1935, no. 2873-II/V—549, d. Feb. 11, 1936, and no. 2439/V—343(2), d. April 5, 1937, in Supplement to *Gazette*, d. Aug. 11, 1917, Pt. I, p. 1 *Gazette* 1917, Pt. I, p. 1666, *ibid* 1935, Pt. I, pp. 1251-1252, *ibid* 1936 Pt. I, pp. 242-243, and *ibid* 1937, Pt. I, p. 643, nots. no. 4098 (1)/V—825-38, d. March 8, 1940, in *Gazette*, 1940, Pt. I-A, p. 65. Not. no. 540 (2)/V—696-41, d. April 4, 1942, in *Gazette* 1942, Pt. I-A, p. 440, not. no. 571/V—180-40, d. Oct. 3, 1942, in *Gazette* 1942, Pt. I-A, p. 337. Not. no. 2801/V—180-40 d. Aug. 7, 1943, in *Gazette* 1943, Pt. I-A, p. 218.

1. For rules under this cl. see nots. no. 514C, d. Aug. 6 1917, no. 107/V—128, d. Jan. 25, 1923, no. 1519/V—380, d. Oct. 14, 1932, and no. 1492 (2)/V—284, d. June 29, 1939, in Supplement to *Gaz.*, d. Aug. 11, 1917, Pt. I, p. 9, *Gaz.*, 1923, Pt. I, p. 124, *ibid* 1932, Pt. I, p. 938, and *ibid*, 1939, Pt. I, pp. 458—459, respectively.

2. For rules under this cl. see not. no. 500C/V—59, d. Aug. 28, 1917, in *Gaz.*, 1917, Pt. I, p. 1464.

3. For rules under this cl. see not. no. 515C, d. Aug. 6, 1917, in Supplement to *Gaz.*, d. Aug. 11, 1917, Pt. I, p. 13.

4. For rules under this cl. see not. no. 516C, d. Aug. 6, 1917, in Supplement to *Gaz.*, d. Aug. 11, 1917, Pt. I, p. 19.

5. Subs. by the A. O. 1950 for [Provl. Govt.] which had been subs. by the A. O. 1937 for [L. G.]

Council⁶;

(b) to prescribe the fees chargeable in respect of any registration under this Act⁷; and

(c) to regulate the keeping of accounts⁸.

(4) All such rules and regulations shall be published in [Official Gazette]⁹

35. Control of Council by State Government.—If at any time it shall appear to the [State Government]¹ that the Council has failed to exercise or has exceeded or abused a power conferred upon it under this Act or has failed to perform a duty imposed upon it by this Act, the [State Government]¹ may, if it considers such failure, excess, or abuse to be of a serious character, notify the particulars thereof to the Council; and if the Council fails to remedy such default, excess or abuse within such time as may be fixed by the [State Government]¹ in this behalf, the [State Government]¹ may dissolve the Council and cause all or any of the powers and duties of the Council to be exercised and performed by such agency and for such period as it may think fit:

Provided that it shall take steps as soon as may be convenient to constitute a new Council of the members prescribed in Section 4.

36. Saving.—No provisions of this Act shall affect a homoeopathic, Ayurvedic or Unani practitioner.

37. * * *

THE SCHEDULE

PERSONS WHO ARE ENTITLED TO HAVE THEIR NAMES ENTERED IN THE REGISTER OF MEDICAL PRACTITIONERS

(See Sections 18, 19, 20 and 21)

1. ³Every person who holds a degree, diploma or licence which is included in Schedule I or II to the Indian Medical Council Act, 1933 (XXVII of 1933), or granted by the Universities in India established by an Act of the Governor-General-in-Council or of the Governor of any Province in India.

2. Every person who has been trained in a Government Medical College or School in India, [or Burma]⁴ and holds a diploma or certificate, granted by the Government [concerned]⁴, declaring him to be qualified—

(a) to practise medicine, surgery and midwifery, or

(b) to perform the duties of military assistant Surgeon, hospital assistant or sub-assistant surgeon.

6. For payment of travelling allowance to members, *see* not. no. 756, d. March 1, 1941, in *Gaz.*, 1941, Pt. I-A p. 68.

7. For rules under this cl. *see* not. no. 55, d. March 7, 1918, no 1172, d. Nov. 29, 1928, and no. 2328/LII. d. Dec. 21, 1938, in Supplement to *Gaz.*, d. March 9, 1918, Pt. I, p. 9, and *Gaz.*, 1928, Pt. I, p. 1230, and *ibid.*, 1938, Pt. I, p. 1636, respectively.

8. For rules under this cl. *see* nots. no. 56, d. March 7, 1918, and no. 67, d. Jan. 21, 1922, in Supplement to

Gaz., d. March 9, 1918, Pt. I, p. 10, and *Gaz.*, 1922, Pt. I, p. 150, respectively.

9. *Subs.* for "Gaz" by A. O. 1937.

1. *Subs.* by the A. O. 1950 for [Prov. Govt.] which had been *subs.* by the A. O. 1937 for [L. G.].

2. S. 37 *omit.* by A. O. 1950 which had been *add.* by the A. O. 1937.

3. *Subs.* for articles 1 and 2 by not. no. 3394/V—18, d. Sept. 29, 1943, which came into force from the same date. The remaining articles were accordingly renumbered.

4. *Ins.* by the A. O. 1937.

3. Every person who has been granted a diploma by the State Medical Faculty in Bengal or by the College of Physicians and Surgeons of Bombay, declaring him to be qualified in like manner.

THE UNITED PROVINCES MELAS ACT, 1938

(U. P. ACT No. XVI OF 1938)

CONTENTS

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 1. Title and extent.
 2. Commencement and application of the Act.
 3. Definitions.
 4. Power to appoint Committee.
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8. Allotment of sites.
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 10. Penalties.
 11. Power to remove unauthorized construction.
 12. Publication and objections to rules.
 13. Recovery of rents.
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(Received the assent of the Governor on February 24, 1939, and was published¹ under Section 75 of the Government of India Act, 1935, on March, 4, 1939).

AN ACT

for the control of certain Melas

Preamble.—Whereas it is expedient to make provision for the proper regulation of *melas* other than those held under the authority of local boards; It is hereby enacted as follows :

Prefatory Note.—For S. O. R. see Gaz. Extra, d. Jan. 12, 1938, p. 4, for R. S. Com., see *ibid*, 1938, Pt. VII, pp. 55—57, for discussion, see L. A., Pro., d. Jan. 24, April 27, Aug. 2 and Oct. 8, 1938, in Vol. III, pp. 813—844, Vol. VI, pp. 1370, 1371, Vol. VII, pp. 140, 142, and Vol. VIII, pp. 120—160, respectively; and L. C. Pro. d. Nov. 30, 1938, in Vol. IV, pp. 47-48.

1. Title and extent.—(1) This Act may be called the United Provinces Melas Act, 1938.

(2) It extends to the whole of [Uttar Pradesh]².

Note.—This Act has been extended to the areas mentioned in column I of this table under the Act or Order mentioned in column 2 and enforced in such areas under notification, if any, mentioned in column 3 with effect from the date mentioned in column 4 against each such area.

Areas	Act or Order under which extended	Notification, if any, under which enforced	Date from which enforced
1	2	3	4
1. Rampur District.	Rampur (Application of Laws) Act, 1950.	..	Dec. 30, 1949.
2. Banaras District.	Banaras (Application of Laws) Order, 1949.	No. 3262 (1)/XVII-MERGE, d. Nov. 30, 1949.	Nov. 30, 1949.
3. Tehri-Garhwal District.	Tehri-Garhwal (Application of Laws) Order, 1949.	Not. No. 3262 (2)/XVII-MERGE, d. Nov. 30, 1949.	Ditto.

1. See Gaz., 1939, Pt. VII-A, pp. 1—3.

2. Subs. by the A. O. 1950 for [the United Provinces].

2. Commencement and application of the Act.—This section and Section 3 shall come into force at once. The Governor may, by notification in [Uttar Pradesh]² Gazette, direct that all or any part of the Act shall come into operation in any area in the [Uttar Pradesh]² where *melas* are held for such period as may be specified in such notification :

Provided that before issuing a notification under this section the Governor shall give at least one month's time for objections and shall consider any objection received within such time.

3. This Act is hereby applied to the *Magh Mela* at Allahabad.

4. Definitions.—(i) "*Mela* means a religious fair or other religious gathering of the public other than —

(a) a *mela* or gathering held under the authority of local board; or

(b) a Muslim religious gathering held in connexion with a *dargah* or *shrine*.

(ii) "District Magistrate" means the District Magistrate of the district in which a *mela* is held ; or, if the area of a *mela* lies in more than one district, such District Magistrate as the [State Government]¹ may appoint for the purposes of this Act.

(iii) "Officer-in-charge" means a magistrate or any person appointed by the [State Government]¹ to perform the duties of an officer-in-charge.

(iv) "*Mela area*" means the area of a *mela* as defined by the District Magistrate.

Note:—For definition of limits of Magh Mela area at Allahabad see not. no. 98 (2)/III—38, d. Dec. 5, 1940, in Gaz., 1940, Pt. I-A, p. 639, no. 4837/III—98 (7)-41, d. Nov. 17, 1941, in *ibid.* d. Nov. 22, 1941, Pt. I-A, p. 349, no. 4202/III—98 (8) 42, d. Dec. 23, 1942, in *ibid.* d. Dec. 26, 1942, Pt. I-A, p. 443, no. 3504/III—98 (7)-42, d. Dec. 2, 1943, in *ibid.* Pt. I-A, p. 340, no. 5197/III—93 (9)-44, d. Dec. 5, 1944, in *ibid.* Pt. I-A, p. 368, no. 3619/III—5 (6)-45, d. Nov. 17, 1945, in *ibid.* d. Nov. 24, 1945, Pt. I-A, p. 325, no. 4152/III—5 (2)/46, d. Dec. 9, 1946, Pt. I-A, p. 1117, in *ibid.* d. Dec. 21, 1946, Pt. I-A, p. 1117, in *ibid.* d. Dec. 21, 1946, Pt. I-A, p. 1117, no. 4914/III—5 (5)-47, d. Nov. 3 1947, in *ibid.* d. Nov. 8, 1947, Pt. I-A, p. 706, no. 7516/III—5 (17)-48, d. Dec. 9, 1948, in *ibid.* d. Dec. 18, 1948, Pt. I-A, p. 622, no. 638/Mela-I, d. Dec. 28, 1950, in *ibid.* d. Jan. 6, 1951, Pt. I-A, p. 5, no. 56/1/M.M., d. Jan. 12, 1951, in *ibid.* d. Jan. 13, 1951, Pt. I-A, p. 17, no. 4475-P (A)/XI—B—19-M-52, d. Dec. 3, 1952, in *ibid.* d. Dec. 6, 1952, Pt. I-A, p. 813.

5. Power to appoint Committee.—The District Magistrate, shall, in accordance with such rules as may be framed by the [State Government]¹ in this behalf, appoint a committee to assist the officer-in-charge in the performance of his duties.

6. Power to impose tolls and fees.—The District Magistrate may, after consulting the committee appointed under Section 5, by rule, impose within the *mela* area—

(i) tolls on any vehicle or animal entering, or any person bringing goods for sale into such area, and

(ii) fees on the registration of animals sold within such area.

7. Power to licence.—The District Magistrate may, by rule, prescribe fees on payment of which and conditions subject to which any person or class of persons may be licensed to ply any profession, trade or calling in the *mela* area.

8. Allotment of sites.—(1) The officer-in-charge may allot sites for any person or class of persons or for any purpose not repugnant to the religion with which the *mela* is connected, and may fix such rent for the site as may appear to him reasonable.

(2) Without prejudice to the generality of the power conferred by sub-section (1), the officer-in-charge may allot sites for the following in particular—

- (i) religious societies of the persuasion with which the *mela* is connected,
- (ii) social and other societies and organizations,
- (iii) Kalpbasis,
- (iv) officials,
- (v) market places,
- (vi) latrines, urinals and rubbish heaps,
- (vii) bathing places,
- (viii) recreation and entertainment, and
- (ix) agricultural, industrial and other exhibitions and demonstrations.

9. Power to make rules.—(1) The [State Government]¹ may make rules² generally for carrying out the purposes of this Act, and in particular for—

- (i) the establishment of a *mela* fund,
- (ii) providing what expenditure shall be defrayed from the *mela* fund and how should any surplus be utilized, and
- (iii) sanitation in the *mela* area.

Such rules shall be published in the Gazette.

(2) The rules made by the [State Government]¹ under the preceding sub-section shall be laid before the Legislature.

(3) Subject to the rules made under sub-section (1) the District Magistrate may make rules to provide generally against the outbreak or spread of fire, and particularly for the following purposes—

- (i) providing for the safety of buildings and structures put up in the *mela*, and of articles brought into the *mela*,
- (ii) prescribing conditions subject to which huts and other structures may be constructed—including limits to the height of such huts or structures and the area on which they are to be built and distances between them,
- (iii) providing for the supply of sand and jars of water at each hut or elsewhere, and
- (iv) restricting the use of fires, for cooking or for any other purpose.

10. In the event of an outbreak of fire, the officer-in-charge may order the demolition of any structure if in his judgment its demolition is necessary or expedient for preventing the fire from spreading, and no suit or other proceeding shall be instituted for an act done or purporting to be done in good faith under this section.

11. Penalties.—Any person who—

- (a) makes any unauthorized construction, or
- (b) uses any unauthorized place as a latrine, urinal or rubbish dump, or
- (c) plies any profession, trade or calling without a licence obtained under the provisions of Section 7 or commits a breach of the conditions of such licence, or

2. See not. no. 98(2)/III—38, d. Oct. 16, 1940, in *Gaz.*, 1940, Pt. I-A, pp. 583—585, no. 1187 P/XI-B—

234/4, d. April 6, 1950 in *Gaz.* 1950, Pt. III, p. 162.

(d) contravenes any of the provisions of the Act or of any rules made under the Act, or

(e) disobeys any order or direction in writing lawfully issued under this Act,

shall be punishable on conviction with a fine which may extend to Rs. 100 and where the offence is a continuing or recurring one with a further fine which may extend to Rs. 25 for every day after the date of the first conviction during which the offender is proved to have persisted in such offence.

12. Power to remove unauthorized construction.—The officer-in-charge may remove any unauthorized construction, and the cost of such removal may be recovered from any person making the construction as an arrear of land revenue.

13. Publication and objections to rules—(1) All rules made by the District Magistrate under Sections 6, 7 and 9 shall be published in the [Uttar Pradesh]¹ Gazette.

(2) Any person objecting to any such rule, may within 30 days of such publication, prefer his objection to the [State Government]² and the [State Government]² may confirm, modify or set aside such rule.

14. Recovery of rents.—(a) If any person fails to pay within the time allowed by the officer-in-charge, the rent fixed under Section 8 (1) or the cost referred to in Section 12, or any part thereof, the officer-in-charge may forward to the Collector a certificate, over his signature, specifying the amount due from such person, and the Collector shall give such person an opportunity to prefer any objection and shall, after hearing and determining such objection as may be made, proceed to recover the amount entered in the certificate or such amount, if any, as he may find to be due, as an arrear of land revenue. If the Collector finds that no amount is due from such person, he shall return the certificate to the officer-in-charge with his finding.

(b) The District Magistrate may order the ejectment from the site allotted of any lessee or licensee who contravenes any rule made by the District Magistrate under this Act.

15. Delegation of powers.—The [State Government]² may by notification in the Gazette delegate³ the power conferred on it under Section 4 (iii) or 13 (2) to any authority subordinate to it.

UTTAR PRADESH MERGED STATES (APPLICATION OF LAWS) ACT, 1950

(U. P. ACT No. VIII OF 1950)

CONTENTS

Sections

1. Short title, extent and commencement.
2. Definitions.
3. Extension of enactments.
4. Repeal of corresponding law.
5. Savings.
6. Amendment of U. P. Act XV of

Sections

- 1948 in its application to the merged states.
7. Powers of Courts and other authorities for adaptation.
8. Repeal of U. P. Ordinance No. 1 of 1950.

1. Subs. by the A. O. 1950 for (United Provinces).
2. Subs. by *ibid* for [Provl. Govt.].
3. For delegation, *see* not. no. 98(2)/III

—38, d. Jan. 18, 1940, in *Gaz.*, 1940, Pt. I, p. 33, and no. 98(2)/III—38, d. Oct. 23, 1940, in *ibid* p. 725.

(As passed by the Uttar Pradesh Legislature)

AN ACT

*to extend certain laws to the merged states of Banaras,
Rampur and Tehri-Garhwal*

Whereas by the United Provinces Merged States (Application of Laws) Ordinance, 1950, certain laws were extended to the merged states of Banaras, Rampur and Tehri-Garhwal administered as part of Uttar Pradesh ;

And whereas the said Ordinance has to be replaced by an Act of the Legislature ;

It is hereby enacted as follows :

Prefatory Note :—For S. O. R., see Gaz. Extra., d. Feb. 20, 1950, pp. 1—4. For discussion, see L. A. Pro., d. March 1, 1950, in Vol. LXVI, pp. 176—179, d. April 20, 1950, in Vol. LXXI, p. 180 and L. C. Pro., d. March 9, 1950 and April 20, 1950, in Vol. XV, pp. 84—93 and 481 respectively.

Passed in Hindi by the Uttar Pradesh Legislative Assembly on March 1, 1950, and by the Uttar Pradesh Legislative Council on March 9, 1950.

Received the assent of the Governor on March 16, 1950, under Article 200 of the Constitution of India and was published in the Uttar Pradesh Gazette Extraordinary, dated March 16, 1950.

1. Short title, extent and commencement.—(1) This Act may be called the Uttar Pradesh Merged States (Application of Laws) Act, 1950.

(2) It extends to the merged states of Banaras, Rampur and Tehri-Garhwal.

(3) It shall be deemed to have come into force on the first day of January, 1950.

2. Definitions.—In this Act unless there is anything repugnant in the subject or context—

- (a) "authority" includes a committee, board or tribunal ;
- (b) "Banaras" shall have the meaning assigned to it in the Banaras State (Administration) Order, 1949 ;
- (c) "Merged states" means the merged states of Banaras, Rampur and Tehri-Garhwal ;
- (d) "Rampur" shall have the meaning assigned to it in the Rampur (Administration) Order, 1949 ;
- (e) "State Government" means the Government of Uttar Pradesh ;
- (f) "State law" means and includes with reference to any of the merged states an Act, rule, regulation, by-law, order or circular having the force of law in such state and continued in force therein by the Banaras State (Administration) Order, 1949, Rampur (Administration) Order, 1949, Tehri-Garhwal (Administration) Order, 1949, as the case may be ; and
- (g) "Tehri-Garhwal" shall have the meaning assigned to it in the Tehri-Garhwal (Administration) Order, 1949

3. Extension of enactments.—(1) So much of the enactments specified in the Schedule to the Merged States (Laws) Act, 1949, as relate to matters with respect to which the State Legislature has and the Parliament has not the powers to make laws for Uttar Pradesh and as have not already been extended to the merged states are hereby extended to and shall be in force on and from the first day of January, 1950, in the merged states subject to—

(i) any amendment to which they were generally subject in or in their application to the United Provinces on the thirtieth day of November 1949, and

(ii) the subsequent provisions of this Act.

(2) In addition to and without prejudice to the provisions of sub-section (1) or of any other law relating to extension or application of laws to the merged states, all enactment in force in, or applicable to, the United Provinces on the thirtieth day of November, 1949, as relate to matters with respect to which the State Legislature has powers to make laws for Uttar Pradesh and as have not already been extended to the merged states are hereby extended to the merged states subject to—

(i) any amendment to which they were generally subject in or in their application to the United Provinces on the date aforesaid, and

(ii) the subsequent provisions of this Act.

(3) Notwithstanding anything in any enactment referred to in sub-section (2), such enactment shall come into force with effect from such date as the State Government may, by notification in the official Gazette, appoint in that behalf and different dates may be appointed for different provisions thereof or for different parts of a merged state.

4. Repeal of corresponding law.—If, immediately before the commencement of this Act, there is in force in the merged state, any state law corresponding to the enactment referred to in Section 3, such corresponding law shall, with effect from the date and to the extent to which an enactment comes into force under and in accordance with the provisions of Section 3, stand repealed in the respective merged state.

5. Savings.—(1) The repeal of any corresponding state law under Section 4 shall not affect—

(a) the previous operation of any such law, or

(b) any penalty, forfeiture or punishment incurred in respect of any offence committed against any such law, or

(c) any investigation, legal proceeding or remedy in respect of any such penalty, forfeiture or punishment,

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if this Act had not been passed.

(2) Subject to the provisions of sub-section (1), anything done or any action taken including any appointment or delegation made, notification, order, instruction or direction issued, rule, regulation, form, by-law or scheme framed, certificate, patent, permit or licence granted or registration effected, under such corresponding law shall—

(a) be deemed to have been done or taken under the corresponding provision of the enactment referred to in Section 3 as now extended to and in force, in the merged state, and

(b) continue in force unless and until directed otherwise or superseded by anything done or any action taken under the said enactment by the State Government or other competent authority.

6. Amendment of U. P. Act XV of 1948 in its application to the merged states.—The United Provinces Sales Tax Act, 1948, shall in its application to the merged states be subject to the following amendment—

After Section 25 of the said Act, following shall be added as a new Section 26 ;

"26. Application of the Act to the merged states.—For the purposes of assessment of tax every dealer who, on the first day of January, 1950, has been carrying on the business of buying or selling or supplying goods in the merged states of Banaras, Rampur or Tehri-Garhwal shall, notwithstanding anything in this Act, be deemed to have been a dealer commencing business during the course of an assessment year and the provisions of Section 18 shall *mutatis mutandis* apply to him".

7. Powers of Courts and other authorities for adaptation.—For the purpose of facilitating the application in any of the merged states of any enactment referred to in Section 3, any court or authority may construe any such enactment with such alteration, not affecting the substance, as may be necessary or proper to adapt it to the matter before the court or other authority.

8. Repeal of U. P. Ordinance No. I of 1950.—The Uttar Pradesh Merged States (Application of Laws) Ordinance, 1950, is hereby repealed and the provisions of Sections 6 and 24 of the United Provinces General Clauses Act, 1904, shall apply to it as if it had been an Act repealed by an United Provinces Act.

THE U. P. MINISTERS AND DEPUTY MINISTERS (SALARIES AND ALLOWANCES) ACT, 1952

(U. P. Act No. X of 1952)

CONTENTS

Sections	Sections
1. Short title.	4. Government conveyance and travelling allowance.
2. Salaries of Ministers and Deputy Ministers.	5. Repeal of U. P. Act I of 1937.
3. Free furnished residence.	6. Rules.

Authoritative English text of the Uttar Pradesh ke Mantriyon aur Up Mantriyon (ke vetan tatha bhatton) ka Adhiniyam, 1952.

AN ACT

to provide for the salaries and allowances to be paid to the Ministers and the Deputy Ministers for Uttar Pradesh.

Whereas it is expedient to provide for the salaries and allowances to be paid to the Ministers and the Deputy Ministers for Uttar Pradesh ;
It is hereby enacted as follows :

Prefatory Note.—For S. O. R. see Gaz. Extra. d. May 19, 1952 ; for discussion see L. A. Pro. d. May 21, 1952, in Vol. CI. p. 52, d. May 26 and 27, 1952, in Vol. CII, pp. 198—253 and 263, d. July 7, 1952 in Vol. CIII. p. 18 and L. Pro. d. May 30 and 31, 1952, in Vol. XXV, pp. 167—188, d. July, 7, 1952, in Vol. XXVI, p. 2.

Passed in Hindi by the Uttar Pradesh Legislative Assembly on May 27, 1952 and by the Uttar Pradesh Legislative Council on May 31, 1952.

Received the assent of the Governor on June 5, 1952, under Article 200 of the Constitution of India and was published in the Gaz. Extra., d. June 7, 1952.

1. Short title.—(1) This Act may be called the U. P. Ministers and Deputy Ministers (Salaries and Allowances) Act, 1952.

(2) It shall come into force at once.

2. Salaries of Ministers and Deputy Ministers.—There shall be paid to :—

- (a) each Minister for Uttar Pradesh a salary of rupees twelve hundred per mensem nett exclusive of taxes on income levied in accordance with the Indian Income Tax Act, 1922.
- (b) each Deputy Minister for Uttar Pradesh a salary of rupees seven hundred and fifty per mensem.

3. Free furnished residence.—(1) Each Minister shall further be entitled to free furnished residence in Lucknow, with grounds appurtenant thereto, maintained at the public expense, throughout the year, and also at such other place in Uttar Pradesh and for such period, as may be appointed by rules to be made by the State Government in that behalf.

(2) Each Deputy Minister shall be entitled to a house rent allowance of rupees one hundred per mensem.

4. Government conveyance and travelling allowance.—(1) There shall further be provided to each Minister for his use suitable conveyance purchased and maintained at public expense in accordance with rules to be made by the State Government in that behalf.

(2) Each Deputy Minister shall be paid a conveyance allowance of rupees one hundred and fifty per mensem.

(3) Each Minister and Deputy Minister shall be entitled for journeys in connexion with public business, to travelling and daily allowances at such rates and upon such conditions as may be determined by rules to be made by the State Government in that behalf.

5. Repeal of U. P. Act I of 1937.—The U. P. Ministers Salaries Act, 1937 shall be and is hereby repealed.

6. Rules.—(1) The State Government may make rules for the purpose of carrying into effect the provisions of this Act.

(2) Without prejudice to the generality of foregoing powers such rules may provide for reimbursement and payment by the State Government of the taxes referred to in Section 2.

THE UNITED PROVINCES MINOR GIRLS' PROTECTION ACT, 1929

(U. P. Act No. VIII of 1929)

Adapted and modified by the Government of India (Adaptation of Indian Laws) Order, 1937.

Adapted and modified by the Adaptation of Laws Order, 1950.

(Received the assent of the Governor on November 28, 1929, and of the Governor-General on January 16, 1930, and was published¹ under Section 81 of the Government of India Act on February 1, 1930).

1. See Gaz. 1930, Pt. VII., p. 4.

Whereas it is expedient to exercise a check on the practice whereby some minor girls in certain classes are devoted to prostitution and to put a stop to immoral traffic in females ;

It is hereby enacted as follows :

Prefatory Note.—For S. O. R. *see* Gaz., 1929, Pt. VII, p. 13 ; for R. S. Com., *see* *ibid* Pt. VIII, pp. 1013-1014 ; for discussion, *see* L. C. Pro., d. Feb. 23, 1929, Oct. 23, 1929 and Oct. 24, 1929, in Vol. XLII, pp. 306-316, and Vol. XLIV, pp. 279-298 and 348-363, respectively.

1. (1) This Act may be called the United Provinces Minor Girls' Protection Act, 1929.

(2) It extends to the whole of (Uttar Pradesh).²

Note.—This Act has been extended to the areas mentioned in column 1 of this table under the Act or Order mentioned in column 2 and enforced in such areas under notification, if any, mentioned in column 3 with effect from the date mentioned in column 4 against each areas :

Areas	Act or Order under which extended	Notification, if any, under which enforced	Date from which enforced
1	2	3	4
1. Rampur District.	Rampur (Application of Laws) Act (XII of 1950.)	Not. no. 2868 (a)/XVII, d. Oct. 30, 1950.	November 4, 1950.
2. Banaras District.	Banaras (Application of Laws) Order, 1949.	Not. no. 2868 /XVII, d. Oct. 30, 1950.	Ditto.
3. Tehri-Garhwal district.	Tehri-Garhwal (Application of Laws) Order, 1949.	Not. no. 2868 (b)/XVII, d. Oct. 30, 1950.	Ditto.

2. If the [State Government]¹ has reason to believe that any community, class or group of persons in [Uttar Pradesh]² is in the habit of devoting its girls to prostitution, it may declare such community, class or group of persons to be a restricted class :

Provided that no such declaration shall be made until the [State Government]¹ has published in the [official Gazette]³ its intention of making such a declaration, and has considered any objections which it may receive regarding such intention within one month of such publication.

3. When the [State Government]¹ has in exercise of the power conferred by Section 2 of this Act declared a community, class or group of persons to be a restricted class, the provisions of the Naik Girls' Protection Act, 1929 shall apply to the said community, class or group of persons as if the said persons were members of the Naik caste and the powers conferred and the penalties prescribed by the said Act may be exercised and enforced with regard to and against such persons.

4. Any person who procures or attempts to procure any woman or girl, whether with or without her consent, to become a prostitute, or who, with intent that she may for the purpose of prostitution become the inmate of, or frequent, a brothel or the house of a prostitute,

1. *Subs.* by the A. O. 1950 for (Provl. Govt.) which had been *subs.* by the A. O. 1937 for (L. G.).
2. *Subs.* by the A. O. 1950 for [the

United Provinces].
3. *Subs.* for "Gazette" by the A. O. 1937.

persuades a woman or girl to leave her usual place of abode shall be punished with imprisonment which may extend to six months, or with fine, or both.

5. The [State Government]¹ may make rules consistent with this Act to carry out the purposes of this Act.

THE UNITED PROVINCES MINOR IRRIGATION WORKS ACT, 1920

(U. P. Act No. I OF 1920)

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Adapted and modified by the Adaptation of Laws Order, 1950

(Received the assent of the Lieutenant-Governor on the 30th April, 1920, and of the Governor General on the 1st June, 1920, and was published¹ under Section 81 of the Government of India Act on the 3rd July, 1920.)

Whereas it is expedient to make provision for the construction, improvement and maintenance by Government of irrigation works on a smaller scale than that contemplated by the provisions of the Northern India Canal and Drainage Act, 1873 ; and whereas the previous sanction of the Governor General has been obtained under sub-section (2) of Section 79 of the Government of India Act, 1915 ;

It is hereby enacted as follows :

Prefatory Note :—For S. O. R. *see* Gazette 1920, Pt. VII, p. 73 ; for discussion, *see* L. C., Pro in *ibid*, pp. 20, 113, 501 and 616.

The provisions of this Act do not apply to State Tube-wells—*see* U. P. Act XII of 1936, in Vol. IV.

PART I

Preliminary

1. Short title and extent.—(1) This Act may be called the United Provinces Minor Irrigation Works Act, 1920.

(2) ²[It shall extend to the whole of Uttar Pradesh.]

Note :—This Act has been extended to the areas mentioned in column 1 of this table under the Act or Order mentioned in column 2 and enforced in such areas under notification, if any, mentioned in column 3 with effect from the date mentioned in column 4 against each such area :

Areas	Act or Order under which extended	Notification, if any, under which enforced	Date from which enforced
1	2	3	4
1. Rampur District	Rampur (Application of Laws) Act (XII of 1950)		December 30, 1949
2. Banaras District	Banaras (Application of Laws) Order, 1949	No. Nos. 3262 (1) and 3262 (2) /XVII d. Nov. 30, 1949	November 30, 1949
3. Tehri-Garhwal District	Tehri Garhwal (Application of Laws) Order, 1949	Ditto	Ditto

2. Definitions.—In this Act, unless there be something repugnant in the subject or context,—

(1) “Construction” (with its grammatical variations and cognate expressions) includes improvement within a limited time and in a specific manner ;

(2) “Minor Irrigation work” or “work” means an irrigation, sub-

1. *See* Gaz., 1920, Pt. VII, p. 695.

2. *Subs.* for sub-s.-(2) of S. 1 by the A.O. 1950.

mersion, drainage or protective work or system of such works, natural or artificial, of which the construction or maintenance by the [State Government]¹ appears to that Government to call for action on a smaller scale than that contemplated by the Northern India Canal and Drainage Act, 1873 ;

(3) "Owner" includes an under-proprietor, a permanent tenure-holder, a permanent lessee, a fixed rate tenant, and a mortgagor or mortgagee in possession ; but does not include a mortgagor or mortgagee out of possession or a lessee for a term of years, nor, where a superior and an inferior right of ownership co-exist, the owner of the superior right.

PART II

Preparation of scheme

3. Preliminary order of the State Government.—The [State Government]¹, may direct the Collector or any other person to make inquiry whether it is desirable to undertake the construction or maintenance of a minor irrigation work of any description in any specified local area.

4. Publication of preliminary order.—(1) The Collector shall, thereupon, publish a notice in the village or villages concerned specifying the place at which and the date (which shall not be earlier than forty-two days after the date of such publication) on which the inquiry shall be held, and shall also, subject to any rule made under Section 47, cause a copy of the notice to be served on any owner whose land he believes to be likely to be affected by the proposed construction or maintenance.

(2) The notice shall set forth the general character of the proposed construction or maintenance, and shall invite all persons having interests likely to be affected thereby to submit any objection or suggestion that they may desire to make on or before a date prescribed in the notice and to produce any evidence in support of such objection or suggestion on the date appointed for the holding of the inquiry.

5. Implied consent of owners.—Every owner of land likely to be affected by such construction or maintenance who fails within the period allowed by the notice to submit any objection or suggestion in the manner prescribed shall be deemed for the purposes of this Act to have given his consent thereto.

6. Inquiry and report by the Collector.—(1) If the Collector or other person appointed to make the inquiry, after considering any objection or suggestion duly submitted and taking such evidence as he thinks necessary, finds that the owners of at least one-half of the land likely to be affected by the construction or maintenance of the work consent, or are deemed to consent, to such construction or maintenance, he shall embody his proceedings in a report to be submitted to the [State Government]¹ and shall in such report make proposals as to the manner in which the [State Government]² is to be compensated or to recoup itself for any expenditure, whether capital or recurring, incurred by it.

(2) If the owners of more than one-half of the land affected or

Subs. by the A. O. 1950 for (Provl. Govt.) which had been *subs.* by the A. O. 1937 for (L. G.).

2. *Subs.* by the A. O. 1950 for [Provl. Govt.] which had been *subs.* by the A. O. 1937 for (Govt.).

likely to be affected are opposed to the construction or maintenance of the work, a report to this effect only shall be submitted to the [State Government]¹.

7. Notification by the State Government directing draft scheme to be prepared.—Upon receipt of the report referred to in sub-section (1) of the preceding section, the [State Government]¹ may, after such further inquiry, if any, as it thinks fit, publish a notification in the [official Gazette]² directing the preparation of a draft scheme of construction or maintenance, or of both.

8. Powers of officer preparing draft scheme.—Upon such publication, any officer empowered by the [State Government]¹ in this behalf by general or special order may enter, or depute any other person to enter upon, any lands within the area specified in Section 3, or on any lands adjacent thereto, for the purpose of doing any act necessary in his opinion for the preparation of the draft scheme, provided that reasonable notice shall be given before entry is made into any building or any enclosed court or garden attached to a dwelling house.

9. Compensation for damage caused by entry under Section 8.—In case of entry under Section 8, the officer empowered under that section shall, at the time of such entry, tender compensation for any damage which may be occasioned by any proceeding under that section; and in case of dispute as to the sufficiency of the amount so tendered, he shall forthwith refer the same for decision by the Collector, and such decision shall be final.

10. Draft scheme.—(1) The officer empowered by [the State Government]³ under Section 8 shall submit a draft scheme to [the State Government]³ and such scheme shall, so far as he deems necessary, embody the following particulars and be accompanied by the following documents, namely:

- (a) a specification and plan of the work which it is proposed to construct or maintain and an estimate of the capital or recurring expenditure involved thereby;
- (b) the estimated time required for the completion of a scheme of construction;
- (c) a statement detailing—
 - (i) the land and interests in land which in his opinion it will be necessary to acquire in order to carry out the scheme,
 - (ii) the portion of such land and interests therein which can be acquired by negotiation,
 - (iii) the portion of such land and interests therein which it will be necessary to acquire under the Land Acquisition Act, 1894, and
 - (iv) an estimate in each case of the expenditure required for the purpose of acquisition;
- (d) the extent to which it will be necessary in his opinion to make compensation for damage caused to property by the carrying out of the scheme and the expenditure required for this purpose;
- (e) the area which will be benefited by the scheme;

1. Subs. by the A. O. 1950 for (Provl. Govt.) which had been subs. by the A. O. 1937 for (L. G.)

2. Subs. for "Gazette" by A. O. 1937.

3. Subs. by the A. O. 1950 for (the Provl. Govt.) which had been subs. by the A. O. 1937 for (Govt.)

- (f) the method of management of the work ;
- (g) with reference to Section 19, the method or methods by which [the State Government]¹ will be recouped or compensated for expenditure incurred by it ;
- (h) where all or any of the owners within the benefited area agree—
 - (i) to make themselves responsible to [the State Government]¹ for any expenditure incurred by [the State Government]¹ from time to time in the execution of the scheme or for interest at a specified rate thereon, or for both, or
 - (ii) to pay any fixed contract sum or sums (along with interest at a specified rate on arrears thereof) to [the State Government]¹ for the execution by [the State Government]¹ of the scheme,

an agreement to either effect executed by such owners ;

- (i) the description of any river or stream flowing in a natural channel, or of any lake or other natural collection of still water, whereof the water should be applied or used for the purpose of the work ;
- (j) any other matter which is required by the circumstances of the case.

(2) Such scheme shall also embody any particulars and be accompanied by any documents required by any rule made under Section 47.

(3) Any agreement referred to in clause (h) of sub-section (1) may provide that on payment of the amount expressed therein the work shall vest in and be maintained by the owners executing the agreement, subject to the provisions of part III.

11. Publication of draft scheme.—(1) Where the draft scheme has been prepared to the satisfaction of [the State Government]¹ a notice giving such particulars as are required by rule in this behalf and stating at what place and times the scheme will be open to inspection shall be published by affixing a copy of the notice in a prominent place in each village of which the land is in the opinion of the Collector likely to be affected by the scheme if carried out.

(2) The Collector may also serve notice to the same effect on any owner or occupier of land likely to be affected by the scheme or on the agent of such owner or occupier.

(3) On publication of the notice under sub-section (1) any person likely to be affected by the scheme may within one month from the date of such publication present in writing to the Collector any objection which he may have to the scheme.

(4) The Collector shall forward to the [State Government]² all objections which may be presented to him together with any remark that he may desire to make in respect of such objections.

12. Adoption by the State Government of approved scheme.—(1) After such modification of the draft scheme as appears to be required by any objection made under the previous section, the [State Government]² may, if it thinks fit to proceed with the scheme, notify the same as approved by publication in the [Official Gazette]³ and thereafter it shall be entitled to carry out such approved scheme in accordance with the provisions of this Act :

1. Subs. by the A. O. 1950 for (the Provl. Govt.) which had been subs. by the A. O. 1937 for (Govt.)

2. Subs. by *ibid.* for (Provl. Govt.) which had been subs. by the A. O. 1937 for (L. G.).

3. Subs. for "Gaz.," by A. O. 1937.

Provided that if the scheme has, in the opinion of the [State Government]² been substantially altered, the provisions of Section 11 shall apply to the amended scheme.

(2) The publication under sub-section (1) of a scheme as approved shall be conclusive proof that any consent recorded therein has been duly obtained, that the scheme will benefit the area specified therein in that behalf (hereinafter called the benefited area), and that the scheme has in all respects been duly prepared and approved.

13. Operation of notified scheme as a notification under Section 5 of Act VIII of 1873.—The intimation in a scheme notified under sub-section (1) of Section 12 of the intention to apply or use the water of any river or stream flowing in a natural channel, or of any lake or other natural collection of still water, for the purpose of the work to which the scheme relates, shall operate as a notification under Section 5 of the Northern India Canal and Drainage Act, 1873 declaring that the said water will be so applied or used on the expiration of three months from the date of the notification.

14. Modification of approved scheme, or substitution of new scheme.—(1) The [State Government]² may from time to time modify any approved scheme notified under Section 12 or substitute another scheme in its stead, and the provisions of this Act applicable to a scheme notified under Section 12 shall thereafter be applicable to any scheme so modified or substituted :

(2) Provided that any consent, publication or other thing required by this Act in respect of a scheme shall be necessary also in respect of the alteration of a scheme or the substitution of a new scheme for an existing one.

PART III

Construction and Maintenance

15. Appointment of officer-in-charge.—The [State Government]¹ may, by general or special order, appoint an officer (hereinafter called the officer-in-charge) to be in charge of the construction or maintenance of a minor irrigation work in respect of which an approved scheme has been published.

16. Powers of officer-in-charge.—(1) The officer-in-charge and any officer to whom he is subordinate shall have the following powers, namely :

- (a) to exercise, with reference to the work, the powers conferred by Section 6 of the Northern India Canal and Drainage Act, 1873 ;
- (b) to prohibit by order in writing any person from doing anything which in his opinion diminishes, or is likely to diminish, the efficiency of the work ;
- (c) to require by order in writing any owner or occupier of land within the benefited area to take or permit such action in respect of any property therein belonging to him or in his possession as may appear necessary for the preservation or maintenance of the work or may appear to be necessary for the purpose of increasing or extending within the benefited area, by means of distributaries or otherwise, the benefit of the work ;

- (d) to enter or authorise any other person to enter upon any land for the purpose of constructing or maintaining the work, or of preventing or remedying the effect of any accident to the same, or of inspecting or regulating the use of the water supplied, or of measuring lands irrigated by the work or chargeable with any water rate or other sum, or of doing any other thing necessary for the proper regulation and management of the work ;
- (e) to require, in cases of urgency, any owner or occupier of land receiving benefit from the work to assist in procuring at market rates such labour as may be necessary for the preservation or maintenance of the work ;
- (f) to do or prevent being done anything in respect of which an order has been issued by him under clauses (b) and (c), provided that the person so ordered has failed to obey the order within the time specified in the order, and provided also that no action shall be taken under this clause in respect of an order issued under clause (c) until such order has become final under Section 17 ;
- (g) if a divisional canal officer, to issue an order in writing to the persons using any water course to construct suitable bridges, culverts or other works for the passage of the water of such water course across any public road, canal or drainage channel in use before the said watercourse was made, or to repair any such works, and on the failure of the person to whom the order has been issued to comply within a reasonable time, himself to take the required action at the cost of such person which shall be recoverable under Section 28.

(2) The power conferred by clause (c) of sub-section (1) shall include the power to order the transfer by one person to another, on the payment of compensation to be determined in the manner described in Section 40, of a water course, or of any land or right in land required for the construction of a water-course.

17. Appeal against order of officer-in-charge.—(1) Orders issued by the officer-in-charge under Section 16 shall be subject to appeal in writing made within fifteen days to such officer or officers as the [State Government]¹ directs by rule, but unless appealed against in the prescribed manner shall be final.

(2) The order of the appellate authority shall be final.

18. Land acquisition.—(1) Any land or interest in land which, in the opinion of the [State Government]¹, it is necessary to acquire in pursuance of a scheme notified under Section 12, shall, for the purposes of the Land Acquisition Act, 1894 be deemed to be required for a public purpose.

(2) For the purpose of sub-section (1) of Section 23 of the said Act the market value of such land at the date of the publication of the declaration relating thereto under Section 6 of that Act shall be deemed to be the market value at the time of the issue of the preliminary order under Section 3 of this Act.

1. Subs. by the A. O. 1950 for (Provl. Govt.) which had been subs. by the

A. O. 1937 for (L. G.).

PART IV

Recovery of expenditure

19. Alternative modes of recoupment by the State Government.—The [State Government]¹ may compensate or recoup itself for any expenditure which it incurs, or agrees to incur, in the carrying out of any approved scheme of construction or maintenance, or of both, in any one or more of the following methods, namely :

- (a) by the levy from the owners of land within the benefited area, whether such benefit takes the form of direct irrigation, percolation, submersion, improvement of the water-supply in wells or drainage of excessive water or otherwise, of a uniform rate or of differential rates imposed on such land in accordance with rules made by the [State Government]¹ ; or
- (b) by the recovery from any owners executing an agreement under clause (h) (i) or clause (h) (ii) of sub-section (1) of Section 10 of any sums due thereunder ; or
- (c) by the realization of miscellaneous income arising from the management by the [State Government]² of the work.

20. Appeal against rates.—(1) An appeal against the assessment or levy of any rate under this Act shall lie to such officer as is empowered by rule in this behalf.

(2) In every appeal the costs shall be at the discretion of the officer deciding the appeal.

(3) Costs awarded under this section against the appellant shall be recoverable as though they were an arrear of land revenue due from the appellant.

21. Limitation of appeal.—No appeal shall lie in respect of any rate unless it is preferred within thirty days from the time when the demand for the rate is first made.

22. Exclusion of jurisdiction of ordinary courts.—No objection shall be taken to any assessment, nor shall the liability of any person to be assessed or rated be questioned in any other manner, or by any other authority, than is provided in or under this Act :

Provided that nothing in this section shall prevent any person from obtaining a declaration in the civil court that he is not liable to such assessment on the ground that he is not the owner of the land in respect of which the assessment has been made, and the assessing officer shall be bound by such declaration.

23. Rate by whom payable when charged on land held by several occupiers.—Where a rate is charged on land held by several joint owners, it shall be payable by the manager or other person who receives the rents or profits of such land, who may recover from such joint owners any sums so paid on their behalf.

24. Enhancement and abatement of rent.—(1) Notwithstanding anything contained in any enactment to the contrary, but subject to any rules made in this behalf, where benefits are received from a minor irrigation work constructed or maintained under this Act, such benefits, whether due to the supply of direct irrigation or to percolation,

1. Subs. by the A. O. 1950 for (Provl. Govt.) which had been subs. by the A. O. 1937 for (L. G.).

2. Subs. by the A. O. 1950 for (Provl. Govt.) which had been subs. by the A. O. 1937 for (Govt.).

submersion, improvement of the water-supply in wells or drainage of excessive water or otherwise, shall be deemed a ground for enhancement of rent.

(2) In like manner, the loss or discontinuance of any benefits received from a minor irrigation work shall be deemed a ground for abatement of rent.

25. Procedure in enhancement and abatement.—Except as may be otherwise provided by rules made under Section 47, all claims under the preceding section in any local area shall be made by suit to be instituted in a revenue court empowered to try suits for the enhancement or abatement of rent in such local area, and the court shall in the trial of such suit follow the procedure prescribed for the trial of suits for the enhancement or abatement of rent in such local area.

26. Apportionment of charges due under clause (b) of Section 19.—Where any sum is recoverable under clause (b) of Section 19 from owners for the time being of land within the benefited area, they shall be jointly and severally liable for the same.

27. Enforcement of agreements previous to Act.—(1) All agreements made within a period of twelve years prior to the date on which this Act comes into force regarding the construction, repair and maintenance of a minor irrigation work which might have been constructed or maintained under this Act, had it been in force, shall, so far as the terms thereof are consistent with this Act, be deemed to have been made under this Act, and shall have force accordingly.

(2) Nothing in sub-section (1) shall apply to any such agreement in respect of a minor irrigation work unless and until the [State Government]¹ declares the work by notification in the [Official Gazette]² to be subject to the provisions of this section.

28. Certified dues and debts recoverable and land revenue.—Any sum lawfully due under this Act and certified by the officer in charge to be so due and any sum not otherwise recoverable under this Act but due under an agreement referred to in Section 27 which remains unpaid after the day on which it becomes due shall be recoverable by the Collector from any person liable for the same as if it were an arrear of land revenue.

29. Power to contract for collection of dues.—(1) The officer in charge or the Collector may enter into an agreement with any person for the collection and payment to the [State Government]³ by such person of any sum payable under this Act by a third party.

(2) When such agreement has been made, such person may recover such sum by suit as though it were an arrear of rent due to him on account of the land in respect of which such sum is payable or water shall have been supplied or used.

(3) If such person makes default in the payment of any sum to be collected by him under this section, such sum may be recovered from him by the Collector under Section 28, and if such sum or any part of it be still due by the said third party, the sum or part so due may be recovered in like manner by the Collector from such third party.

30. Lambardars may be required to collect dues.—(1)

1. Subs. by the A. O. 1950 for (Provl. Govt.) which had been subs. by the A. O. 1937 for [L. C.].
2. Subs. for "Gazette" by A. O. 1937.

3. Subs. by the A. O. 1950 for (Provl. Govt.) which had been subs. by the A. O. 1937 for (Govt.).

In the absence of an agreement made under Section 29 with any other person the Collector may require the lambardar of any mahal to collect and pay any sums payable under this Act by a third party in respect of any land or water in such mahal, and in the event of his failing to pay any sum so required, may recover it from him as an arrear of land revenue.

(2) Where a lambardar is required to pay any sum under sub-section (1), all the provisions of law for the time being applicable to the recovery by him or by the Collector on his behalf of land revenue and remuneration fees from any third party shall apply to the recovery of such sums from any third party liable for the same as if they were enacted in this Act.

31. Saving in respect of fines.—Nothing in Sections 28, 29 and 30 applies to fines.

PART V

Penalties and preventive action

32. Offences.—Whoever without proper authority, and voluntarily, does any of the following acts, namely—

- (1) damages, alters enlarges or obstructs any work;
- (2) interferes with, increases or diminishes the supply of water in or the flow of water from, through, over or under any work;
- (3) being responsible for the maintenance of any work or of any part thereof or using any work or any part thereof, neglects to take proper precautions for the prevention of waste of the water thereof, or interferes with the authorized distribution of water therefrom or uses such water in an unauthorized manner;
- (4) corrupts or fouls the water of any work so as to render it less fit for the purposes for which it is ordinarily used;
- (5) destroys or moves any level-mark or water-gauge fixed by the authority of a public servant;
- (6) passes, or causes animals or vehicles to pass, on or across any work, contrary to rules made under this Act;
- (7) violates any rule made under this Act the breach of which is declared to be punishable, or disobeys any lawful order of Collector or other officer;

shall be liable on conviction before a magistrate to imprisonment for a period not exceeding one month or to a fine not exceeding fifty rupees or, where the offence is a continuing one, to further fine which may extend to ten rupees for every day on which the offence continues after the date of first conviction.

33. Saving.—Nothing herein contained shall prevent any person being prosecuted under any other law for any offence punishable under this Act, provided that no person shall be punished twice for the same offence.

34. Summary arrest.—Any person in charge of or employed upon any work may remove from the lands or buildings belonging thereto, or may take into custody without a warrant and take (or send) forthwith to a magistrate or to the nearest police station, to be dealt with according to law, any person who within his view commits any of the following offences:

- (a) wilfully damages or obstructs any work;
- (b) without proper authority interferes with the supply or flow of water to or from any work so as to endanger, damage or render less useful such work.

35. Definition of "work" in this part.—In this part the word "work" shall be deemed to include all lands occupied by [the Government]¹ for the purpose of a minor irrigation work in respect of which an approved scheme has been published and all buildings, machinery, fences, gates, and other erections, trees, crops, plantations or other produce, occupied by or belonging to [the Government]¹ upon such lands.

PART VI

Jurisdiction and procedure

36. Preparation of record-of-rights.—(1) The Collector shall, whenever the [State Government]² by special order, or by rules made under this Act, so directs, prepare or revise for any minor irrigation work in respect of which an approved scheme has been published a record showing all or any of the following matters, namely :

- (a) the custom or rule of irrigation ;
- (b) the rights to water and the conditions on which such rights are enjoyed ;
- (c) the rights as to the erection, repair, reconstruction, and working of mills, and the conditions on which such rights are enjoyed ; and
- (d) such other matters as the [State Government]² may by rule prescribe in this behalf.

(2) Entries in the record so prepared or revised shall be relevant as evidence in any dispute as to the matters recorded, and shall be presumed to be true until the contrary is proved or a new entry is lawfully substituted therefor :

Provided that no such entry shall be so construed as to limit any of the powers conferred on [the State Government]³ by this Act.

(3) When a record showing all or any of the matters enumerated in sub-section (1) has been framed at any settlement of the land revenue such record shall be deemed to have been made under this section.

(4) Every person interested shall be bound to furnish to the Collector, or to any person acting under the direction of the Collector, all information necessary for the correct preparation of a record under this section.

(5) The provisions of Chapter IV of the United Provinces Land Revenue Act, 1901, shall, so far as may be, apply to the preparation and revision of every such record.

37. Settlement of disputes between private persons.—(1) Subject to the provisions of Section 39, whenever a dispute arises between two or more persons in regard to any right or liability arising from the construction or maintenance under this Act of a minor irrigation work in respect of which an approved scheme has been published, or arising from the issue of any order under this Act in respect of such work, any such person may apply in writing to the officer in charge of the work stating the matter in dispute.

(2) That officer shall thereupon give notice to the other persons interested that, on a day to be named in notice, he will proceed to inquire into the said matter.

1. Subs. by the A. O. 1950 for (the Crown) which had been subs. by the A. O. 1937 for (Govt.).

2. Subs. by *ibid* for (Provl. Govt.) which had been subs. by the A. O.

1937 for (L. G.).

3. Subs. by for (the Provl. Govt.) which had been subs. by the (A. O.) 1937 for [Govt.]

(3) On the day fixed for the inquiry, or on any subsequent day, the aforesaid officer shall pass an order determining the matter in dispute, unless he transfers (as he is hereby empowered to do) the matter to the Collector, who, in such case, shall inquire into and pass an order determining the said matter.

(4) An order under sub-section (3) may award compensation to any person who is a party to the proceedings against any other such person for any injury sustained; and any compensation so awarded shall be recoverable upon application made to the Revenue Court having jurisdiction in the area concerned as if it had been awarded by a decree of that court.

(5) The order of the officer in charge of the work or of the Collector as to the use or distribution of water shall be final as far as it applies to any crop sown or growing at the time when such order is made, and so far as it applies to any future crop shall remain in force until and except so far as it is set aside by a subsequent order passed in a fresh dispute under this section or by a decree of a civil court passed in a suit or proceeding within its jurisdiction.

(6) For the purpose of sub-section (5) a dispute shall be deemed to be a fresh dispute when it arises out of different or changed circumstances.

38. Compensation for damage caused by the application or use of water.—The provisions of Sections 7 to 13 (inclusive) of the Northern India Canal and Drainage Act, 1873 shall be applicable, as if they were enacted in this Act, in respect of compensation for any stoppage, diminution or damage of the description contemplated by the aforesaid sections and caused by the carrying out of any scheme under this Act.

39. Compensation relating to water-courses.—(1) Where the transfer of any watercourse or of any land or interest in land required for the construction of a water course is directed by an order made under Section 16, upon payment of compensation, the Collector shall, on the application of any person affected by such order, proceed to determine the compensation under the provisions of the Land Acquisition Act, 1894; but he may, if the person to be compensated so desires, award such compensation in the form of a rent-charge payable in respect of the land or water course occupied or transferred.

(2) If any sum or rent-charge awarded under sub-section (1) is not paid when lawfully demanded by the person entitled to receive the same, the amount shall be recovered by the Collector as if it were an arrear of land revenue, and shall, when recovered, be paid by him to the person entitled to receive the same.

40. Compensation for damage caused by entry under Section 16 (1) (d).—In every case of entry under clause (d) of Section 16 (1) upon any lands adjacent to a minor irrigation work for the purpose of preventing or remedying the effect of any accident to the work, the officer in charge shall tender compensation to the proprietors or occupiers of the said lands for all damage done to the same. If such tender is not accepted, the officer in charge shall refer the matter to the Collector, who shall proceed to award compensation for the damage as though the [State Government]¹ had directed the occupation of the lands under Section 35 of the Land Acquisition Act, 1894.

1. Subs. by the A. O. 1950 for (Provl. Govt.) which had been subs. by the

A. O. 1937 for (L. G.).

41. Compensation for damage caused in other cases.—Where any damage, other than damage of the description referred to in Section 9, 16 (2), 38, 39 (1) or 40 is caused to a person by the exercise, with reference to a minor irrigation work, of any of the powers conferred by this Act, the officer in charge of the work shall, subject to any rules made under Section 47 in this behalf, tender reasonable compensation to the person sustaining the damage and, in case of dispute as to the sufficiency of the amount tendered, he shall forthwith refer the matter for decision to the Collector, and such decision shall be final.

42. Limitation of claims for compensation for damage.—No claim for compensation for damage under this Act shall be made after the expiration of one year from the accrual of the damage, unless good cause is shown by the claimant for not making his claim within that period.

43. Bar to suits against officers.—No suit or other legal proceeding shall lie against any officer of [the Government]¹ or person acting under the directions of an officer of [the Government]¹ for anything done or intended to be done in good faith under this Act.

44. Powers to summon and examine witnesses.—Any officer empowered by or under this Act to conduct any inquiry or to assess compensation may exercise all such powers connected with the summoning and examining of witnesses as are conferred on civil courts by the Code of Civil Procedure, 1908, and the inquiry or proceeding shall be deemed a judicial proceeding.

PART VII

Miscellaneous

45. Vesting of work.—Every work shall be deemed to be vested in the persons or authority for the time being entrusted with the construction or maintenance thereof by the terms of a scheme notified under Section 12.

46. Delegation of powers by the State Government.—The [State Government]² may delegate any of its powers under this Act to the Board of Revenue or to the Commissioner or other officer, and in such case references to the [State Government]² shall be construed as references to the Board of Revenue, the Commissioner, or other officer, as the case may be.

47. Power of the State Government to make rules.—(1) The [State Government]² may, after previous publication, make rules³ to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power such rules³ may be made as to all or any of the following matters, namely :

- (a) the nature, scope and extent of works to be undertaken under this Act;
- (b) the conduct of an inquiry under Section 3 and other matters relating to the preparation of a draft scheme;

1. *Subs.* by *ibid* for (the Crown) which had been *subs.* by the A. O. 1937 for (Govt.).

2. *Subs.* by the A.O. 1950 for (Provl. Govt.) which had been *subs.* by the A. O. 1937 for (L. G.).

3. For rules, *see* nots. no. 1911-I-M/51-B—37-W-1, d. Feb. 13, 1926 and no. 2758-I.M./51-B—37-W-1, d. March 8, 1926, published in *Gaz.* 1926, Pt. I, pp. 169 and 228, respectively.

- (c) the publication and service of notices under Sections 4 and 11 ;
 - (d) the particulars and documents to be embodied in or submitted with a draft scheme ;
 - (e) the rates leviable from owners and the method of assessing the same and time of payment ;
 - (f) the officer to whom an appeal shall lie under Section 20 ;
 - (g) the procedure to be adopted in proceedings held under Section 24 for the enhancement or abatement or rent ;
 - (h) the remuneration of persons collecting sums for the State Government under Section 29 or 30 and their indemnification against expenses properly incurred in collection ;
 - (i) the delegation by the State Government of any powers conferred upon it under this Act.
- (3) In making any rule under this section the State Government may declare that a breach of such rule is punishable under this Act.
- (4) All rules made under this section shall be published in the Official Gazette and on such publication shall have effect as if enacted in this Act.

RULES MADE UNDER THE U. P. MINOR IRRIGATION WORKS ACT, 1920

[Vide U. P. Gazette dated February 20, 1926, Pt. I pp. 169—170.]

In exercise of the powers conferred by Section 47 of the Uttar Pradesh Minor Irrigation Works Act, 1920 (Uttar Pradesh Act I of 1920), the Government are pleased to make the following rules :—

1. (1) These rules may be called the Uttar Pradesh Minor Irrigation Works Rules, 1926.

(2) They shall come into force on March 1, 1926.

2. In these rules, unless there is anything repugnant in the subject or context,—

(1) "The Act" means the Uttar Pradesh Minor Irrigation Works Act, 1920 (Uttar Pradesh Act I of 1920).

(2) "Rules" means these Rules and all subsequent amendments thereof.

(3) "Commissioner" means the chief officer in charge of the revenue administration of a division.

(4) "Collector" means the chief officer in charge of the revenue administration of a district and shall include a Deputy Commissioner and the Superintendent, Dehra Dun.

(5) "Canal Officer," "Superintending Canal Officer," "Divisional Canal Officer" and "Sub-Divisional Canal Officer" have the same meanings as in the Northern India and Drainage Act, 1873 (VIII of 1873).

3. The notice published by the Collector or served on any owner under Section 4 (1) of the Act shall be in writing, in English and Urdu or Hindi, and shall allow a period of not less than 30 days between the date of publication of the notice and the final date up to which any objection or suggestion under Section 4 (2) of the Act may be received.

4. (1) The Superintending Canal Officer, Divisional Canal Officer or Sub-Divisional Canal Officer having jurisdiction within the area specified under Section 3 of the Act is empowered under Section 8 to enter or depute any person to enter upon any lands within such area, or any

lands adjacent thereto, for the purpose of doing any act necessary in his opinion for the preparation of the draft scheme. Provided that no person below the rank of a Sub-Divisional Canal Officer shall be so deputed.

(2) Notice of intention to enter, under Section 8 of the Act, into any building or any enclosed court or garden attached to a dwelling house shall be in writing, in English and Urdu or Hindi, and shall be given not less than three days' notice before such entry is effected.

5. The agreements taken from the owners under Section 10 (h) of the Act shall usually be in one of the forms A, B, C or D published in Appendix I to these rules, but for special reasons or in exceptional cases these forms of agreements may be modified, or other forms adopted with the previous sanction of the State Government. The agreements shall in all cases be countersigned by the Collector.

6. The Collector before forwarding to the Local Government, as required by Section 11 (4) of the Act, the objections received, shall ascertain the views of the officer who prepared the draft scheme regarding such objections.

7. An order under Section 16 (1) (g) of the Act shall allow at least 30 days for compliance therewith.

8. Appeals against orders passed under Section 16 (b), (e) and (g) shall lie to the Superintending Canal Officer, and those under Section (16) (e) to the Collector of the district.

9. In the absence of any agreement or agreements to the contrary, executed with the previous sanction of the State Government or Superintending Canal Officer, the rate or rates imposed under Section 19 (a) of the Act by the Canal Officers appointed for the purpose shall be in accordance with the rate or rates notified by the State Government in the Uttar Pradesh Gazette from time to time. Provided that a lower rate may be imposed by the Divisional Canal Officer with the previous sanction of the Superintending Canal Officer in each case. Items not included in the schedule of rate or rates mentioned above shall be charged for at rates to be specially decided upon in each case by the Divisional Canal Officer with the previous approval of the Superintending Canal Officer.

10. Any person wishing to keep a boat or canoe in a reservoir, may do so with the permission in writing of the Divisional Canal Officer.

11. Appeals under section 20 (1) of the Act against the assessment or levy of any rate shall lie to the Superintending Canal Officer whose decision shall be final.

12. When a suit for the enhancement or abatement of rent of any land is instituted in a revenue court under Section 25 of the Act, the court shall issue a commission to the Divisional Canal Officer to give his opinion on the claim after local investigation. The Divisional Canal Officer shall thereupon submit his report and the evidence taken by him, to the Court stating whether land has in his opinion received any benefits, or has suffered any loss or discontinuance of benefits, from a minor irrigation work, and, if so, to what extent. The Court shall take the report and the evidence into consideration in deciding the suit.

13. Any person who has entered into an agreement under Section 29 (1) of the Act for the collection and payment to Government of sums payable by the third party shall be allowed such allowance or fee as may be payable under the rules made from time to time under the Northern

India Canal and Drainage Act, 1873 (VIII of 1873), to lambardars or other persons who have entered into agreements for collecting rates.

14. No person shall without the permission in writing of the Divisional Canal Officer—

- (i) pass or cause any animal or vehicle to pass on or across any of the works, banks or channels controlled under this Act by Government; after he has been desired to desist therefrom, excepting upon such bridges, fords and ferries and their approaches as are provided for public use. (A notice in English and Urdu or Hindi, displayed at the junction of a public road with such work, bank or channel shall be deemed to communicate a desire to desist from passing on or crossing the canal work), or
- (ii) fish in any reservoir or canal by any other means excepting the fishing rod.

Any breach of this rule shall be punishable under Section 32 of the Act.

15. The notice to be given under Section 37 (2) of the Act shall be in writing, in English and Urdu or Hindi, and shall fix a day for the inquiry not less than 21 days after the date of notice.

16. The Divisional Canal Officer shall not be bound to keep any fixed minimum of supply of water impounded in any work or to undertake to empty it partially or completely. He shall have full liberty of action in these respects.

17. An appeal under the Act, from any executive order passed by a Subordinate Canal Officer or a Canal Deputy Magistrate shall lie to the Divisional Canal Officer, and from any original executive order passed by the Divisional Canal Officer to the Superintending Canal Officer.

All matters of disagreement between the Divisional Canal Officer and the Collector shall be referred by the Superintending Canal Officer to the Commissioner, whose decision shall be final.

THE MIRZAPUR STONE MAHAL ACT, 1886

(U. P. ACT No. V OF 1886)

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THE SCHEDULE

Amended by Act XII of 1891¹

Amended by U. P. Act XII of 1922²

*Adapted and modified by the Government of India
(Adaptation of Indian Laws) Order, 1937*

Adapted and modified by the Adaptation of Laws Order, 1950

[Received the assent of the Governor-General on the 29th January, 1886]

AN ACT

*to declare and amend the Law relating to the Stone Mahal in the District of Mirzapur in the North-Western Provinces.*³

Whereas it is expedient to declare and amend the Law relating to the Stone Mahal in the District of Mirzapur in the North-Western Provinces³; It is hereby enacted as follows :

Prefatory Note :—For S. O. R., see Gaz. of I., 1885, Pt. V, p. 285; for Proceedings in Council, see *ibid*, Supplement, pp. 1491, 1524 and *ibid*, 1886, Supplement p. 225.

Preliminary

1. Short title and commencement.—(1) This Act may be called the Mirzapur Stone Mahal Act, 1886 ; and

(2) It shall come into force on such day⁴ as the [State Government]⁵, by notification in the official Gazette, appoints.

2. [Repeal of Bengal Regulation II of 1800.] Rep. by Act XII of 1891, Section 2 and Schedule I.

3. Definitions.—In this Act, unless there is something repugnant in the subject or context,—

(1) "the district" means the whole of the area comprised in the district of Mirzapur as constituted at the time of the passing of this Act except the lands described in the schedule to this Act ;

(2) "Collector" means the Collector of the Mirzapur District, and includes an Assistant Collector of the first class empowered by him to perform any of the functions of the Collector under this Act ;

(3) "Commissioner" means the Commissioner of the Benaras Division ;

(4) * * *

(5) "quarry" means to take from the surface as well as to extract from a quarry ;

(6) "transport" means to remove from one place to another within the district ;

(7) "proprietor" includes an assignee of land-revenue and any person claiming under a proprietor or exercising any of the rights of a proprietor.

1. Rep. by Act I of 1938.

2. Vol. II.

3. Now U. P.

4. The 1st May, 1889—see not. no. 132/ XIII—26, d. April 13, 1889, in Gaz. 1889, Pt. I, p. 171.

5. Subs. by the A. O. 1950 for [Provl. Govt.] which had been subs. by the A. O. 1937 for [L. G.]. I.

6. Sub-sec. (3), which was as follows,

rep. by Act XII of 1891:

"(3) The power conferred by this Act on the L. G. to make rules may be exercised at any time after the passing of this Act ; but a rule so made shall not take effect until the Act comes into force".

7. Cl. (4) re. definition of "Board" rep. by S. 2 and Sch. of U. P. Act XII of 1922.

Rights of the State Government and the Public

4. Right of the State Government to levy duty.—The [State Government]¹ is entitled to levy duty on all stone quarried in the district.

5. Prohibition of levy of duty by proprietors.—No proprietor of any land in any part of the district is entitled to impose any prohibition or restriction, or to demand or receive any sum by way of rent, premium, duty or price, in respect of the opening of a quarry, or the quarrying of stone, in the land, or in respect of the storing of stone at the quarry or the transport of stone over the land, or, save as may be provided by rules made under this Act, to receive from any person any compensation whatever in respect of any of the matters aforesaid.

6. Right of the public to quarry stone.—(1) Subject to the rules made under this Act, any person is entitled to open a quarry, or quarry stone, in any land in any part of the district, and to store the stone at the quarry, and to transport it over any land.

(2) A person may, so far as the rules made under this Act permit, acquire an exclusive right to open a quarry, or quarry stone, within certain local limits in any part of the district, and may retain the right so long as those rules permit.

(3) If a dispute as to the right referred to in sub-section (1), to open a quarry, or quarry stone, in any land, or as to the existence of or mode of exercising an exclusive right referred to in sub-section (2), to open a quarry or quarry stone, within certain local limits, arises between any persons, or if a dispute as to the right to store stone on, or transport stone over, any land arises between the person claiming to store or transport the stone and the proprietor of the land, it shall, on application for that purpose by either of the disputing parties to the Collector, be decided by him.

(4) A Civil Court shall not take cognizance of any such dispute or in any suit or proceeding whatever make any decree or order whereby any party to the dispute may be bound with respect to the subject-matter thereof either directly or indirectly.

Rules

7. Power to make rules.—(1) The [State Government]² may, from time to time, make rules³ consistent with this Act to regulate within the whole or any specified part of the district all or any of the following matters :

- (a) the quarrying of stone, and the places where stone may be quarried ;
- (b) conflicting claims to exercise the right of opening a quarry or quarrying stone ;
- (c) the conditions on the fulfilment of which a person is to acquire an exclusive right of opening a quarry, or quarrying stone, within certain local limits, and how that right may cease to exist ;

1. Subs. by the A. O. 1950 for [Provl. Govt.] which had been subs. by the A. O. 1937 for [Govt.].

2. Subs. by the A. O. 1950 for [Provl. Govt.], which had been subs. by the A. O. 1937 for [L. G.].

3. For rules, see notes. no. 3277/I-137-42, d. Oct. 14, 1944, in *Gaz.* 1944. Pt. I-A, Supplement, no. 1447/I-A-137-42, d. Oct. 4, 1947, in *Gaz.* 1947 Pt. I-A, p. 610.

- (d) the compensation to be paid for injury caused to crops or arable land by the quarrying, storing or transport of stone, and the authority by which the compensation is to be determined ;
- (e) the transport of stone ;
- (f) the storing of stone ;
- (g) the classification of stones, the rate or rates of duty to be paid in respect of each class of stone to the [State Government]¹ or to a farmer to whom the [State Government]¹ has leased the duties leviable thereon, and the time when, the place where and the persons by whom the duty is to be paid ;
- (h) the exemptions from, or reductions of, duty to be allowed, the conditions to attach to those exemptions or reductions, and the consequences to ensue on the breach of any of those conditions ;
- (i) the custody and disposal of stone confiscated or seized under this Act ; and
- (j) generally, for carrying out the purposes of this Act.

(2) In making a rule under this section the [State Government]² may direct that a breach of it shall be punishable with fine which may extend to one hundred rupees, and, when the breach is a continuing breach, with a further fine, which may extend to ten rupees for every day after the first during which the breach continues.

8. Procedure for making rules.—(1) The [State Government]² shall, before making any rules under Section 7, publish a draft of the proposed rules for the information of persons interested.

(2) The publication shall be made in such manner as in the opinion of the [State Government]³ is sufficient.

(3) A notice shall be published with the draft specifying a date at or after which the draft will be taken into consideration.

(4) The [State Government]² shall, before making the rules, receive and consider any objection or suggestion which is made by any person with respect to the draft before the date so specified.

9. Publication of rules.—Every rule made under Section 7 shall be published in the official Gazette in English and in such other language or languages as the [State Government]² directs, and that publication shall be conclusive proof that the rule has been made as required by Section 8.

10. Deferred operation of rules altering duty.—If a rule made under Section 7, sub-section (1), clause (g), alters the rate of duty to be paid in respect of any class of stone, it shall not have effect till the expiration of one year from the date on which it is published.

Offences

11. Penalties for evasion of duty.—If any person evades, or attempts to evade, or abets the evasion of, the payment of any duty payable under a rule made under Section 7, sub-section (1), clause (g), he shall be punished with fine which may extend to two hundred rupees and twenty times the duty payable on the stone in respect of which the

1. Subs. by the A. O. 1950 for [Provl. Govt.] which had been subs. by the A. O. 1937 for [Govt.].

2. Subs. by the A. O. 1950 for [Provl. Govt.] which had been subs. by the A. O. 1937 for [L. G.].

offence was committed, and the Court convicting him may further order the confiscation of the stone.

12. Burden of proof as to payment of duty.—The burden of proving that duty has been paid on stone in respect of which a prosecution for an offence under Section 11 has been instituted shall lie on the accused person.

13. Limitation for prosecutions.—A prosecution for an offence under Section 11 or against a rule made under Section 7 shall not be instituted after the expiration of six months from the commission of the offence.

14. Saving of prosecutions under other laws.—Nothing in this Act shall prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence under Section 11 or against a rule made under Section 7, or from being liable under that other law to any other or higher punishment or penalty than that provided by Section 11 or a rule made under Section 7 :

Provided that a person shall not be punished twice for the same offence.

Arrest, Seizure and Search

15. Powers of officers.—(1) Any officer whom the Collector, with the previous sanction of the Commissioner, may empower in this behalf, may—

(a) proceed, in respect of an offence under Section 11 or against a rule made under Section 7 which in his presence a person commits or is accused of committing, in the same manner as a police officer may proceed, under Section 57 of the Code of Criminal Procedure, 1882,¹ in respect of a non-cognizable offence which in his presence a person commits or is accused of committing ; and

(b) seize any stone in respect of which he has reason to believe that an offence under Section 11 or against a rule made under Section 7 has been committed, and, if the stone is being transported, use for the removal thereof to the nearest place appointed for the custody of stone seized under this Act, any animals and conveyances used in transporting it.

(2) The powers conferred by this section may be exercised as well beyond as within the limits of the district, and if in the exercise of those powers a person is arrested or stone is seized beyond those limits, then, notwithstanding anything in this Act, the person arrested shall be liable to be dealt with, and the stone seized to be disposed of, in the same manner as if he had been arrested or it had been seized within those limits.

16. Search warrants.—(1) A Magistrate may issue his warrant for the search, after sunrise and before sunset, of any building, vessel or place in which he has reason to believe that stone in respect of which an offence under Section 11 or against a rule made under Section 7 has been committed is kept or concealed, and for the seizure of any stone found there.

1. See now the same S. of Code of Criminal Procedure, 1898 (Act V of

1898.

(2) The provisions of the Code of Criminal Procedure, 1882,¹ relating to searches under that Code shall, so far as the same are applicable, apply to searches under this section.

Recovery of duty

17. Recovery of duty.—An arrear of duty payable to the [State Government]² under a rule made under Section 7, sub-section (1), clause (g), and an arrear due from a farmer of duties payable on stone may be recovered from the person primarily liable to pay the same to the [State Government],² or from his surety (if any), as if it were an arrear of land revenue.

Appeal and Revision

18. Appeal and Revision.—(1) Decisions and orders passed under this Act or any rule thereunder by an Assistant Collector, whether as Collector or otherwise, shall be appealable to the Collector of the Mirzapur District in the manner provided by the law for the time being in force in the district respecting appeals from the orders of an Assistant Collector to the Collector in matters pertaining to land revenue.

(2) Decisions and orders passed by the Collector of the Mirzapur District under this Act or any rule thereunder shall be appealable to the Commissioner in the manner provided by the law aforesaid respecting appeals from the orders of the Collector to the Commissioner.

(3) [The State Government or an officer or authority appointed by it for this purpose]³ may revise any decision or order passed under this Act or any rule thereunder by an Assistant Collector, whether as Collector or otherwise, or by the Collector of the Mirzapur District, or under sub-section (2) by the Commissioner.

Miscellaneous

19. [Saving of existing rates of duty.] Rep. by Act XII of 1891.

20. Exemption of the inhabitants of the hills.—(1) Notwithstanding anything hereinbefore contained but subject to any rules which the [State Government]⁴ may from time to time make to regulate the enjoyment of the privilege hereby conferred, the inhabitants of the tract south of the Vindhya range of hills shall be exempt from the payment of duty on stones quarried by them within the limits of that tract for their own use within those limits.

(2) The [State Government]⁴ may, from time to time, by notification in the official Gazette, define the limits⁵ of the said tract for the purposes of this section.

1. See now Ss. 103—101 of the Code of Criminal Procedure, 1898 (Act V of 1898), India Code Vol. III.

2. Subs. by the A. O. 1950 for [Provl. Govt.] which had been subs. by the A. O. 1937 for [Govt.].

3. Subs. by A. O. 1950 for [The Tribunal to be constituted under Section 296 (2) of the Government of India Act, 1935] which had been subs. by the A. O. 1937 for [L. G.] which had been subs. for [Board] by S. 2 and Sch. of U. P. Act XII of

1922. For the discharge of functions of the Tribunal, by the Board of Revenue U. P., see not. no. 270-K., d. April 16, 1937, in *Gaz.*, 1937, Pt. I, p. 776.

4. Subs. by the A. O. 1950 for [Provl. Govt.] which had been subs. by the A. O. 1937 for [L. G.].

5. For note defining the limits of the tract, see not. no. 134/XIII—26, d. April 13, 1889, in *Gaz.* 1889, Pt. I, p. 171.

THE SCHEDULE
LANDS EXCLUDED FROM THE AREA COMPRISED IN THE
DISTRICT OF MIRZAPUR
[See Section 3, sub-section (1)]

Pargana or tappa	Village	Remarks
Kantit	Bajtha	These villages were transferred from the Allahabad District in 1840.
	Baghaura Rajman	
	Pali	
	Sumatia	
	Barha Khurd	
	Basaura	
	Chak Kothara	
	Chak Madari	
	Dogaui	
	Rasauli	
Upraudh	Kothara	These villages were transferred from the Allahabad District in 1861.
	Ghunguti	
	Hargarh	
	Nairi Katari	
	Durjanipur	
	Deohat	
	Mahuat	
	Maheshpur	
	Katra Lahorya Dih.. ..	
	Bhainsaur	
	Mahagarhi	

THE UNITED PROVINCES MOLASSES CONTROL
ACT, 1947¹

(U. P. ACT No. XXIII OF 1947)

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1. For S. O. R., see *Gaz. Extra. d. Aug. 8, 1946*, pp. 36-39 for R. S. Com. see *Gaz. d. Jan. 25, 1947*, Pt. VII, pp. 29-30; for discussion, see L. A. Pro., d. Aug. 15, 1946, in Vol. XXV, pp. 440-441, d. Feb. 7 and 9, 1947, in Vol. XXVII, pp. 962-963

and 1215-1217, d. April 9, 1947, in Vol. XXXV, pp. 436-452, d. Feb. 24, 1948, in Vol. XLIV, pp. 51-52, and L. C. Pro., d. May 26, 1947, in Vol. IX, p. 36, d. Dec. 1, 1947, in Vol. X, p. 94.

Adapted and modified by the Adaptation of Laws Order, 1950.

(Passed by the United Provinces Legislative Assembly on April 9, 1947, and the United Provinces Legislative Council on May 26, 1947.)

(Received the assent of the Governor-General on October 16, 1947 under Section 76 of the Government of India Act, 1935, and was published² in the United Provinces Government Gazette, dated November 8, 1947.)

AN ACT

to provide for the grading and the marketing of molasses produced by sugar factories and for the control of the prices of molasses intended for use in distilleries or otherwise.

Whereas it is expedient to provide for the grading of molasses and for regulating the supply thereof for distillation and other matters and the prices at which it may be sold and for other purposes incidental thereto ;

It is hereby enacted as follows :

CHAPTER I

Preliminary

1. (1) This Act may be called the United Provinces Molasses (Control) Act, 1947.

(2) It extends to the whole of [Uttar Pradesh]³.

(3) It shall come into force on such date as the [State Government]⁴ may, by notification in the official Gazette, appoint in this behalf.

Note :—This Act has been extended to the areas mentioned in column 1 of this table under the Act or Order mentioned in column 2 and enforced in such areas under notification, if any, mentioned in column 3 with effect from the date mentioned in column 4 against each such area :

Areas	Act or Order under which extended	Notification, if any, under which enforced	Date from which enforced
1. Rampur District ..	Rampur (Application of Laws) Act, 1950.	Notification No. 1685/XVII, d. June 27, 1950.	July 1, 1950.
2. Banaras District ..	Banaras (Application of Laws) Order, 1949.	Notification No. 1892/XVII, d. June 27, 1950.	Ditto.
3. Tehri-Garhwal District.	Tehri-Garhwal (Application of Laws) Order, 1949.	Notification No. 1826/XVII, d. June 27, 1950.	Ditto.

This Act came into force, with effect from July 11, 1950, see Not. No. 199-E/XIII—250-50, d. July 11, 1950, in Gaz. d. July 15, 1950, Pt. I, p. 444.

2. In this Act unless there is anything repugnant in the subject or context,—

2. See Gaz., d. Nov. 8, 1947, Pt. VII-A, pp. 31-32.
3. Subs. by the A. O. 1950 for (the

- United Provinces).
4. Subs. by the A. O. 1950 for [Provl. Govt.].

- (a) 'Government' means the Government of [Uttar Pradesh].¹
- (b) 'Controller' means the officer appointed as Controller of Molasses under Section 4 ;
- ²[(c) 'Molasses' means the heavy, dark coloured viscous liquid produced in the final stage of manufacture of sugar by vacuum pan, from sugarcane or gur when the liquid as such or in any form or admixture contains sugar.]'
- (d) 'Sugar factory' means any premises, including the precincts thereof, whereon twenty or more workers are working, or were working on any day of the preceding twelve months and in any part of which a manufacturing process connected with the production of sugar by means of vacuum-pans or in open pans is being carried on or is ordinarily so carried on with the aid of power ;
- (e) 'Occupier of a sugar factory' means the person who has ultimate control over the affairs of a sugar factory.

CHAPTER II

³[**3. Molasses Board.**—(1) There shall be established by the Government a Molasses Board for Uttar Pradesh.

(2) The Molasses Board shall be a body corporate having perpetual succession and a common seal and shall by the said name sue and be sued.

(3) The Molasses Board shall consist of—

(a) the Controller who shall be *ex-officio* chairman ;

(b) ten members to be appointed by the Government of whom three shall be representatives of sugar factories and three of distilleries ;

(c) the Assistant Excise Commissioner (Molasses) who shall be *ex-officio* Secretary of the Board.

(4) The term of office of the members referred to in clause (b) shall be two years :

Provided that the term of office of a member nominated to fill a casual vacancy shall be the remainder of his predecessor's term of office :

Provided further that the Government may for any reason which may appear to it to be sufficient remove any such member at any time.]

⁴[**3-A. Functions of the Board.**—The Molasses Board shall—

(a) advise on matters concerning the grading and marketing of molasses, the prices at which molasses are to be sold and generally on their allocation for distilleries and other purposes ; and

(b) perform such other functions as may be prescribed.]

4. The Government may, by notification in the official Gazette, appoint any officer as Controller of Molasses to exercise all the powers and to perform all the duties provided in this Act or in any rules made thereunder.

⁵[**5. Powers to control supply and distribution, etc. of molasses.**—(1) If the Government is of the opinion that it is necessary

1. Subs. by the A. O. 1950 for [the United Provinces].

2. Subs. by U. P. Act XII of 1956, S. 2.

3. Subs. by U. P. Act XII of 1956, S. 3.

4. Added by *ibid*, S. 4.

5. Subs. by *ibid*, S. 5.

or expedient so to do for maintaining supplies of molasses for distillation and other purposes or for securing their equitable distribution and availability at fair prices, it may, by order, provide for supply and distribution thereof and trade and commerce therein.

(2) Without prejudice to the generality of the powers conferred by sub-section (1), an order made thereunder may provide—

- (a) for controlling the price at which and the manner in which molasses may be bought or sold for any purpose and different price may be provided for different purposes ;
- (b) for regulating by licences, permits or otherwise the storage, supply, transport, distribution, disposal, acquisition, use or consumption of molasses ;
- (c) for requiring any person or owner or occupier of a sugar factory to sell their molasses, held in stock or produced or to be produced in the factory to the State Government to the exclusion, complete or partial, of others or to such persons or class of persons and in such circumstances and upon such terms as may be specified in the order ;
- (d) for the taking of samples and grading and testing of molasses ;
- (e) for regulating or prohibiting any class of commercial or financial transactions relating to molasses, which in the opinion of the authority making the order, are, or, if unregulated, are likely to be, detrimental to the public interest ;
- (f) for collecting any information or statistics with a view to regulating or prohibiting any of the aforesaid matters ;
- (g) for requiring occupiers of sugar factories and persons engaged in the production, supply or distribution of, or trade and commerce in, molasses, to maintain and produce for inspection such books, accounts and records relating to their business and to furnish such information relating thereto, as may be specified in the order ; and
- (h) for any incidental and supplementary matters, including in particular the grant or issue of licences, permits or other documents their terms and conditions and the charging of fees therefor.

(3) Where molasses have, in pursuance of an order under clause (c) of sub-section (2) of Section 5, been sold to the State Government, the State Government shall pay therefor the price which shall be—

(In this formula x is the price per maund, of sugarcane fixed by the Government in annas. The result obtained will be the price of molasses per maund in pies.)

(4) An order made under this section shall—

- (a) in the case of an order of a general nature or affecting a class of persons, be notified in the official Gazette, and
- (b) in the case of an order directed to a specified individual, be served on such individual—
 - (i) by post under postal certificate or by delivering or tendering it to that individual, or
 - (ii) if it cannot be so delivered or tendered by affixing it on the outer door or some other conspicuous part of the premises in which that individual lives, and a written report thereof shall be prepared and witnessed by two persons living in the neighbourhood.

(5) Any order made under this section shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or any instrument having effect by virtue of any enactment other than this Act].

6. [Deleted by U. P. Act XII of 1956].

7. [Deleted by U. P. Act XII of 1956].

8. (Deleted by U. P. Act XII of 1956).

9. Whoever contravenes any provisions of this Act or any rules made or order passed thereunder, shall, on conviction, be punishable with imprisonment of either description which may extend to one year or with fine [or both]² and any court trying such contravention may direct that any stock of molasses, in respect of which the court is satisfied that the contravention has taken place, shall be forfeited to [Government]¹ in whole or in part.

10. If the person contravening an order made or deemed to be made under this Act or any rules made thereunder is a company or partnership firm, every director, partner, manager or secretary thereof shall, unless he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention, be deemed to be guilty of such contravention.

11. (1) No court shall take cognizance of any offences punishable under this Act or any rules made or order passed thereunder except on a report in writing of the facts constituting such offence made by the Controller or by a District Magistrate.

(2) No court inferior to that of a Magistrate of the first class shall try any offence against this Act or any rule or order made thereunder.

(3) An offence punishable under the Act or any rule or order made thereunder shall, subject to the provisions of this Act, be cognizable and bailable within the meaning assigned to these terms in the Criminal Procedure Code, 1898.

12. (1) Any police officer not below the rank of sub-inspector, or any officer duly empowered by the Controller in this behalf, may—

(a) enter and search at any time any premises in which he has reason to believe that any molasses, in respect of which any offence, punishable under this Act or any rule or order made thereunder, has been, or is about to be committed, is kept or concealed ;

(b) seize such molasses and any box, [pit]², receptacle, package covering containing such molasses ²[and any books, accounts, documents or statements relating to transaction in such molasses].

³[(c) detain, search and arrest any person whom he has reason to believe to be guilty of any offence punishable under this Act ;]

(2) All searches made under this section shall be in accordance with the provisions of the Code of Criminal Procedure, 1898.

⁴[(3) A police officer not below the rank of an officer in charge of a police station or an officer of the Excise Department or Revenue Department not below such rank as the State Government may prescribe may

1. Subs. by the A. O. 1950 for [His Majesty].

2. Ins. by U. P. Act No. XII of 1956.

3. Ins. by U. P. Act XII of 1956, S. 8.

4. Add. by *ibid.*

investigate into any offence punishable under this Act committed within the limits of the area in which such officer exercises jurisdiction].

³[(4) Any such officer may exercise the same powers in respect of such investigation as an officer in charge of a police station may, exercise in a cognizable case under the provisions of Chapter XIV of the Code of Criminal Procedure, 1898].

13. (1) A report about any molasses or article seized under Section 12 shall, as soon as possible, be submitted to the Magistrate, having jurisdiction who may, after making such inquiry as he may consider necessary, give such direction for their temporary custody as he thinks fit.

(2) Where no prosecution is instituted the Magistrate shall direct the return of such molasses or articles to the person from whom they were seized.

4[13-A. Power of the Controller to compound offences.—The Controller may accept from any person who is reasonably suspected of having committed an offence punishable under Section 9, a sum of money not exceeding five thousand rupees by way of composition for the offence which may have been committed, and in all cases whatsoever in which any property has been seized as liable to confiscation under this Act may release the same on payment of the value thereof as estimated by him.

On the payment of such sum of money or such value, or both, as the case may be, to the Controller, the accused person, if in custody, shall be discharged, the property seized shall be released and no further proceedings shall be taken against such person or property.]

14. The Controller may, by notification in the official Gazette, direct that any power conferred or any duty imposed on him may, subject to such conditions as he may specify, be exercisable also by any officer subordinate to him.

15. The Government may, by notification in the official Gazette, exempt any area or any person [or class of persons]⁴ from all or any of the provisions of this Act.

4[15-A. Bar to certain suits.—(1) No suit shall lie in any civil court against the Government or any officer or person for damages for any act in good faith done, or ordered to be done, in pursuance of this Act or any Rules or Orders made thereunder.

(2) No civil court shall try any suit which may lawfully be brought against the Government in respect of anything done, or alleged to have been done, in pursuance of this Act, unless the suit is instituted within six months after the date of the act complained of.]

16. (1) The Government may, by notification published in the official Gazette, make rules⁵ to carry out the provisions of this Act.

⁵[(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the matters relating to the establishment of the Molasses Board;

(b) the manner and the procedure for the conduct of business and the discharge of functions by the Molasses Board;

4. Added by *ibid.*

5. Inserted by *ibid.*, S. 12.

6. For rules, see not. no. 5168-E/XIII.

—W-215-45, d. Nov. 24, 1951, in
Gaz. d. Dec. 1, 1951, Pt. I-A, p.
770.

- (c) the procedure relating to the removal of members of Molasses Board, and
- (d) matters which are to be and may be prescribed.]

For the validation of any order made, action or proceeding taken, the Section 13 of U. P. Act XII of 1956 is reproduced below :—

“13. Validation of acts and proceedings.—(1) Any act or thing done including any order made, action or proceeding taken or jurisdiction exercised under the provisions of the Principal Act before the commencement of this Act which would have been validly and properly done or omitted under the Principal Act as amended by this Act shall be deemed to be and to have been validly and properly done, made, taken or exercised thereunder.

(2) All suits or other proceedings questioning the validity of any act or thing done under the Principal Act prior to the commencement of this Act on the ground that any provision of the Principal Act was not valid in law shall abate and be dismissed.”

**EXTRACT FROM U. P. GOVERNMENT GAZETTE DATED
DECEMBER 1, 1951 (PART I-A) PAGES 770-73**

MISCELLANEOUS

November 24, 1951

No. 5168-E/XIII-W.—215-45—In exercise of the powers conferred by sub-section (1) read with sub-section (2) of Section 16 of the U. P. Molasses (Control) Act, 1947 (Act XXIII of 1947), the Governor has been pleased to frame the following Rules to carry out the provisions of the said Act. These Rules shall come into effect from the date of their publication in the English Gazette of Uttar Pradesh.

The U. P. Molasses Control Rules, 1951

1. These Rules may be called the U. P. Molasses Control Rules, 1951.

2. In these Rules, unless there is anything repugnant in the subject or context :

(a) “The Act” means the U. P. Molasses Control Act, 1947 (Act XXIII of 1947).

(b) “Distillery” means the premises whereunder a licence issued under the provisions of the U. P. Excise Act, 1910 (IV of 1910), power, potable or industrial alcohol may be manufactured.

(c) “Assistant Exise Commissioner” means an Excise Officer of the said rank having jurisdiction over the area, under the provisions of the Excise Act, 1910 (IV of 1910), or deputed to perform any function under the Act.

(d) Excise Inspector or Sub-Inspector means an Excise Inspector or Sub-Inspector appointed under Section 10 of the U. P. Excise Act (IV of 1910), having jurisdiction over the area or deputed to perform any function under this Act.

(e) “Distributing Licensee” means a person, firm, company or Association holding a licence in form M. L. 1 to carry on the sale and distribution of molasses and shall include any person, firm, company or Association to whom molasses may be sold under Section 6 (1) of the Act.

- (f) "Collector" means the Collector of the District or any person exercising the powers of the Collector.

II.—Supply of Molasses

3. (a) Every distillery in the U. P. shall submit to the Controller by September 1, each year an indent in the form prescribed under these rules, of its estimated requirements of molasses during the twelve months commencing from November 1, following.

(b) On receipt of the indents, mentioned in (a), the Controller will check the quantities of molasses indented for and after making such variation as he considers necessary, draw a consolidated statement showing for each distillery the requirements of molasses for distillation purposes and will forward the same to the Distributing Licensee.

(c) The Distributing Licensee will, on receipt of the Controller's order, proceed to allocate to the sugar factory quantities indented for in the statement accompanying the said order for the supply of molasses. The allocation order, so drawn by him will be forwarded to the Controller.

(d) The Controller may make such alteration in the allocation order as he may consider necessary and return it to the Distributing Licensee for service on the sugar factories concerned. The allocation order passed by the Controller shall be final, subject to any modification made by him from time to time.

(e) On receipt of the allocation order from the Controller the Distributing Licensee shall serve it on each sugar factory concerned. The occupier of the sugar factory on whom the order is served shall indent wagons from the railway authorities and ship molasses to the distilleries concerned without claiming any loading or other incidental charges, which will be covered by the price paid for molasses.

(f) Haulage and loading of a wagon by an occupier of a sugar factory shall not be refused on the plea of holiday or any other ground, without the prior approval of the Collector or any other officer authorised by the Controller in this behalf. Every occupier of a sugar factory shall on the arrival of a railway wagon, promptly make all necessary arrangements for the haulage and the loading of molasses, and where the occupier of a sugar factory fails, without sufficient reason to make such arrangements, any person authorised for the purpose by the Collector or the Controller shall have the power to enter upon the premises, make arrangements for the haulage and loading of molasses by manual labour, if necessary, and recover the cost incurred from the said occupier of the sugar factory.

4. If a distillery is not supplied molasses in accordance with the allocation order concerned, the Manager shall inform the Controller under endorsement to the Distributing Licensee. The Controller will thereupon pass such orders for the supply of molasses to the distillery as he may consider proper.

5. The ownership of all molasses allotted to a distillery shall continue to vest in the occupier of sugar factory concerned until it is actually delivered at the distillery and all losses accruing from any cause other than a wilful act or wilful commission on the part of the distillery shall be borne by the occupier of sugar factory.

6. (a) The price at which molasses of various grades shall be sold by the occupier of sugar factory to the Government or the Distributing Licensee or the distillery, shall be notified by the Government. Unless

otherwise directed by the Government, this price shall cover all cost, incidental to the loading of molasses into Railway wagons or into containers, if the transport is by road.

(b) No occupier of sugar factory may refuse delivery of molasses to a distillery in accordance with the Controller's orders on any ground. Where a payment for the molasses is not made within a week of the receipt of molasses at the distillery, the fact shall be reported by the occupier of sugar factory to the Controller who shall pass suitable orders, which shall be binding on the occupier of sugar factory and the distillery concerned.

(c) All disputes regarding the payment of price for molasses shall be referred to the Controller whose decision in the matter shall be final and legally binding on all concerned.

III.—Sugar Factories

7. (a) The Controller shall specify from time to time the grades under which molasses shall be classified. Molasses issued for sale from the sugar factory shall conform to such grades.

(b) The method of analysis to be followed in determining the specifications and grades to which molasses shall conform, shall be prescribed by the Controller.

8. The contents of any tank or pit intended for the storage of molasses at a sugar factory or a distillery, not being molasses shall, if the Controller by an order in writing, so direct, be disposed of as waste, in such manner as may be ordered by the Controller.

9. Every occupier of sugar factory shall maintain such minimum stock of molasses for distillery purposes, as may be fixed by the Controller from time to time.

10. Every occupier of a sugar factory shall set apart a covered tank within the premises of the factory for the safe preservation of molasses. The occupier of the sugar factory shall provide necessary safeguards against leakage or any other accident likely to damage the quality of molasses stored in the tanks.

11. The occupier of a sugar factory shall submit to the Controller as well as to the Distributing Licensee on or before 31st August of each year in a form to be prescribed by the Controller an estimate of the quantity of molasses likely to be produced at the sugar factory during the crushing season commencing from November 1, following or subsequent date.

12. The occupier of a sugar factory shall maintain, in the form prescribed by the Controller, an accurate account of all molasses produced, issued or stored in the sugar factory.

13. (a) No molasses shall be removed from the premises of a sugar factory except under a pass in the prescribed form. These forms shall be in sextuplicate, and shall be issued by the occupier of the sugar factory or if the Controller so directs by the duly authorised agent of the Distributing Licensee or by an officer authorised by the Controller in this behalf. Two copies of the pass shall accompany the consignment, one copy shall remain with the occupier of the sugar factory, one copy shall be sent to the Controller, one shall be sent to the Excise Inspector of the Circle in which the sugar factory is situated and one copy shall remain with the Distributing Licensee.

(b) On receipt of the consignment, the consignee will verify the quantities received and note on the back of the pass and return a copy

thereof to the Distributing Licensee and another copy to the occupier of sugar factory concerned.

(c) Consignments destined for use in distilleries in the Uttar Pradesh, shall be verified by the distillery Excise Inspector concerned or any other person authorised by the Controller in this behalf.

IV.—Distributing Licensee

14. No person shall move molasses from the premises of a sugar factory or a distillery or sell or otherwise dispose of such molasses except under the orders of the Controller or the Distributing Licensee as provided under the Molasses Control Act and under these rules :

Provided that this shall not apply to movement, sale or disposal by persons other than the occupier of a sugar factory or distillery, of molasses lawfully obtained under the Act or these rules.

15. The Government may require a Distributing Licensee to furnish a bond or security deposit for a sum to be fixed by them for the due performance of the conditions under these rules.

16. Except as otherwise directed by the Controller, no occupier of a sugar factory shall sell molasses to any person other than the Distributing Licensee and at a price other than that fixed by Government.

17. The Distributing Licensee shall regulate the standardization, storage and despatch of molasses in accordance with these rules and such other orders as the Controller may issue from time to time.

18. If any occupier of a sugar factory fails to carry out any direction issued under rule 77, the Distributing Licensee shall report the facts to the Controller, who may take such action as he considers necessary against the offending party.

19. Surplus molasses, left after meeting the requirements of the State distilleries under rule 3, will be sold by the Distributing Licensee for use within or outside the U. P. at such reasonable rates (hereinafter referred to as the selling rates) as he may fix from time to time. The Distributing Licensee shall communicate the selling rates fixed by him to the Controller.

20. The Distributing Licensee shall be responsible to the Controller for the due observance of these rules and such other instructions and orders as may be issued by him from time to time, particularly with regard to the proper storage of molasses at sugar factories, regular and prompt supplies of molasses of standard quality to distilleries at the rates fixed by Government from time to time and the proper maintenance of accounts.

V.—Test and Samples

21. For the control test of molasses, it should be seen whether molasses conform to the specifications and standards prescribed under rule 7 (a).

22. (a) On arrival of molasses at a distillery and before discharge into the storage tanks reserved for the purpose control test shall be carried out forthwith, with the assistance, if necessary, of the distillery by the Excise Inspector in charge of the distillery or such other officer as may be deputed for the purpose by the Controller. The result of the test shall be drawn up in triplicate, the original being sent to the occupier of the sugar factory and the duplicate to the distillery, within 24 hours of completing the test.

(b) Subject to the result of the final test under rule 24 and unless otherwise directed by the Controller, the price of molasses payable to the occupier of sugar factories shall be based on the grade determined by the Excise Inspector or other officer referred to in sub-rule (a) above.

(c) Persons making control test under sub-rule (a) above shall take samples in triplicate and keep the same in safe custody. In case there is any disagreement between the Excise Inspector or other officer referred to in sub-rule (a) above and the occupier of the sugar factory or the distillery as to the grade of molasses, the occupier of the sugar factory or the distillery may, within 14 days of the date of control test, require in writing the Excise Inspector or other officer referred to in sub-rule (a) above, to send one of the samples of molasses to the Harcourt Butler Technological Institute, Kanpur, provided the occupier of the sugar factory or the distillery, as the case may be, shall bear the cost of analysis.

23. On receipt of report of Harcourt Butler Technological Institute, the Excise Inspector in charge of distillery or another officer referred to in rule 22(a) shall forthwith send intimation to the occupier of the sugar factory and the distillery. If the occupier of the sugar factory or the distillery does not accept the report of the Harcourt Butler Technological Institute, it may within 14 days of the date of despatch of intimation appeal to the Chemical Examiner, U. P. provided that the occupier of the sugar factory or the distillery, as the case may be, shall deposit in advance into the Treasury, the requisite examination fee and forward the treasury chalan to the Excise Inspector or other officer referred to in rule 22(a).

24. If there is no disagreement as to the grade of molasses or if there is disagreement and the report of the final analysis on appeal has been received, the sample of molasses kept by the Excise Inspector in charge of distillery or other officer referred to in sub-rule 22(a) above, will be destroyed on the expiry of 30 days from the date of control test or the receipt of final analysis on appeal, as the case may be.

25. No distillery shall refuse molasses supplied by the occupier of a sugar factory under the orders of the Controller, without the prior approval of the Controller or an officer authorised in this behalf by the Controller :

Provided that, if the Excise Inspector or ther Officer referred to in rule 22(a) declares on control test any molasses supplied by a sugar factory to be of a grade which is unfit for distillery use, the distillery may exercise its discretion and accept or refuse such molasses.

Further provided that, if the distillery refuses such molasses, it shall return the molasses at the cost of the sugar factory, such cost plus compensation, if any, as may be fixed by the Controller, or any other officer authorised in this behalf by the Controller, being payable by the distillery if on subsequent final analysis under rule 22 and rule 23, the molasses is declared by the Harcourt Butler Technological Institute, Kanpur or the Chemical Examiner, U. P. to be of a grade fit for distillery use.

VI.—Powers, Penalties and Appeals

26. In addition to the powers which the Controller may exercise under the provisions of the Act and these rules, he may, by general or special order and subject to the provisions of the Act and these rules, direct :

(1) What measures, weights and instruments shall be maintained by the occupier of the sugar factory, distillery and the Distributing Licensee, how these may be standardized and what persons may inspect them.

(2) What returns shall be submitted and what records and books shall be maintained by the occupier of sugar factories, distilleries, the Distributing Licensee, purchasing agents, or the Distillery Excise Inspector, the manner in which these are to be verified and the time when returns are to be submitted.

(3) How the articles confiscated under the Act shall be disposed of.

(4) In what forms, passes, certificates or permits shall be issued under these rules, and

(5) the functions that shall be performed by the officers of the Exise Department for carrying out the provisions of the Act and these rules.

27. Collectors and District Excise Officers shall inspect molasses storage tanks in their districts at least once a year and the Assistant Excise Commissioner at least once a quarter and record the result of their inspection in the inspection book that shall be maintained at sugar factories. The occupier of sugar factories shall submit a copy of the inspection note to the Controller through the Assistant Excise Commissioner. Such inspecting officers shall have all the powers specified in Section 12 of the Act, and the accounts of molasses maintained at sugar factories shall be open to their inspection.

28. (1) The officer making a seizure under the Act or these rules shall take two samples of the articles seized and immediately seal both the stock and the samples taken. The person from whose possession the seized articles have been recovered shall be allowed to affix his seal also on the stock and samples if he so desires. One of the samples shall be delivered to such person and the other retained by the person making such seizure if he is an officer empowered to make an investigation. In cases in which the seizure is made by an officer not empowered to make an investigation under the Act, he shall immediately report the seizure to an officer empowered to make such investigation and produce before him the other sample.

(2) The officer making the seizure may depute a person to watch the sealed stock.

29. (a) An appeal shall lie to the Controller from any administrative order passed by the Collector.

(b) A petition or appeal to the Controller shall be presented within 30 days of the order appealed against exclusive of the time taken in obtaining the copy of the order. The petition shall be properly stamped and accompanied by a certified copy of the order appealed against.

30. Where any person holding any licence under the provisions of the Act or these rules contravenes any provision of the Act or these rules or the terms of his licence, his licence may be suspended or cancelled by the authority which granted it.

VII—Miscellaneous

31. Wherever no Distributing Licensee is licensed to carry on the distribution of molasses at any time, the Controller shall, as far as may be, perform the functions of the Distributing Licensee also.

FORM M. L. I.

Licence for sale and distribution of molasses produced at the Vacuum Open Pan Sugar Factories in the Uttar Pradesh.

Register No.

Name of licence holder.

Period for which licence granted.

Subject to the provisions of the U. P. Molasses Control Act, 1947, and the rules made thereunder, licence is hereby granted to hereafter called the "Distributing Licensee", for the exclusive privilege to sell molasses, produced at the sugar factories in the U. P. to any person, firm, Company or Association duly authorised in this behalf by virtue of a pass or permit granted by the Distributing Licensee under the U. P. Molasses Control Rules, 1951.

The licence shall also be subject to the following special conditions :

(1) That the licensee shall accord highest priority to the supply of molasses of requisite grade to distilleries situated in the U. P. in accordance with the orders issued by the Controller from time to time.

(2) That the licensee shall be bound to supply molasses to the U. P. distilleries at the rates and within the period fixed by Government or the Controller, as the case may be, from time to time.

(3) The licensee shall be bound to maintain at a sugar factory such minimum stock of molasses under such conditions as the Controller may prescribe with a view to ensure regular supplies of molasses of requisite grade to U. P. distilleries.

(4) (a) The licensee shall sell surplus molasses, not required for distillation purposes in the U. P. to any person, firm or company as provided in the Act and the rules made thereunder and subject to the conditions of this licence.

Such molasses after being lawfully sold and delivered, shall be free from any control over further movement, sale or disposal.

(b) If the selling rate of surplus molasses is higher than the basic rate on which it has been purchased from the occupier of sugar factories, the licensee shall remit the whole of the difference to the Government for constitution into a Fund for research and development of Power Alcohol Industry in the U. P. subject to any deductions which the Government may authorise by way of remuneration for carrying on the work as Distributing Licensee or for meeting the charges as may be payable to occupier of sugar factories on account of molasses supplied to distilleries.

(5) The licensee shall maintain regular and accurate accounts in the form prescribed by Controller, of all transactions made for the disposal of molasses and shall produce the same for inspection on the requisition of any officer authorised by Government to demand their production. He shall furnish to the Controller returns prescribed by the Controller and shall be bound to submit such other statements, and information relating to the sale and distribution of molasses as may be required by the Controller.

(6) As security for the due fulfilment of the conditions of the licence the licensee shall, if required by the Government, deposit with the Controller Rs. (in words) in cash or in Government Promissory Notes of equivalent market value or in such other form as the Controller may approve.

(7) Any infringement of the Act or the U. P. Molasses Control Rules, 1951, or any of the special conditions of this licence, may involve

forfeiture of the security deposit and the cancellation of the licence in addition to such other penalties as may be prescribed under the Act or U. P. Molasses Control Rules, 1951.

Excise Commissioner and
Controller of Molasses, U. P.

Granted this day.....19 .

THE MOTOR VEHICLES (UNITED PROVINCES AMENDMENT) ACT, 1948¹

(U. P. ACT NO. XI OF 1948)

CONTENTS

Sections

Preamble.

1. Short title, extent and commencement.
2. Addition of Section 64-A in Act IV

Sections

- of 1939.
3. Addition of Section 63-A in Act IV of 1939.

Passed by the United Provinces Legislative Assembly on November 6, 1947, and by the United Provinces Legislative Council on September 20, 1947.)

[Received the assent of the Governor-General on February 12, 1948 under Section 76 of the Government of India Act, 1935, as adapted by the India (Provisional Constitution) Order, 1947 and was published² in the United Provinces Government Gazette, dated, February 21, 1948.]

AN ACT

to amend the Motor Vehicles Act, 1939

Preamble.—Whereas it is expedient to amend certain provisions of the Motor Vehicles Act, 1939, in its application to the United Provinces for the better organization of the motor transport ;

It is hereby enacted as follows :

1. Short title, extent and commencement.—This Act may be called the Motor Vehicles (United Provinces Amendment) Act, 1947.

(2) It extends to the whole of [Uttar Pradesh]³

(3) It shall come into force at once.

2. Addition of Section 64-A in Act IV of 1939.—After Section 64 of the Motor Vehicles Act, 1939, the following shall be inserted as Section 64-a.

*64-A. Revision. * * **

3. Addition of Section 68-A in Act IV of 1939.—After Section 68 of the Motor Vehicles Act, 1939, the following shall be inserted as Section 68-A.

1. For S. O. R, see *Gaz.* May, 10, 1947, Pt. VII, pp. 57-58; for discussion, see L. A. Pro., d. Nov., 6, 1947, in Vol. XLIII, pp. 283-299, d. April 29, 1948, in Vol. XLVIII, p. 320; and L. C. Pro., d. Sep. 10, 19 and 20, 1947, in Vol. IX, pp. 329, 755-758 and 759-764, d.

May 6, 1848, in Vol. XI, p. 525.

2. See *Gaz.* d. Feb. 21, 1948, Part VII-A, pp. 15-16.

3. Subs. by the A. O. 1950 for [the United Provinces].

4. Section 64-A omit. by S. 2 of U. P. Act X of 1951.

"68-A. Powers of State Government in respect of certain routes.—
(1) If, for better organization of motor transport, it is, in the opinion of the [State Government]¹ necessary or expedient to do so, it may, notwithstanding anything contained in this Act, by notification in the official Gazette, direct the appropriate Transport Authority in respect of such route or part of route in [Uttar Pradesh]² as may be specified therein—

(a) that such permits as may be specified therein may be granted to a joint stock company,

(b) that any permit or class of permit be cancelled; and

(c) that no application for the grant of a new permit or for the renewal of any permit and no appeal from any person aggrieved by the cancellation of a permit under clause (b) shall be entertained or heard or decided by any Transport Authority.

(2) No order made or deemed to be made by any Transport Authority in pursuance of a direction given under sub-section (1) shall be called in question in any court and no suit or other legal proceeding shall lie against the [State Government]¹ or any Transport Authority for any damages caused or likely to be caused by anything in good faith done or intended to be done by or under this section.

(3) The [State Government]¹ may by notification in the official Gazette prescribe that any provision of Sections 42 to 68 and any rule made thereunder shall not apply or shall apply with such modification as it may consider necessary to a permit granted or to be granted under clause (a) of sub-section (1) or to a permit cancelled under clause (b) of sub-section (1)."

THE MOTOR VEHICLES (UTTAR PRADESH AMENDMENT) ACT, 1950³

(U. P. ACT No. X OF 1951)

CONTENTS

Sections

1. Short title and commencement.

Sections

2. Omission of Section 64-A of Act IV of 1939.

*Authoritative English text of the Motor Vehicles (Uttar Pradesh)ia
Sanshodhan) Adhiniyam, 1950*

AN ACT

to amend the Motor Vehicles Act, 1939 for certain purposes

1. Subs. by the A. O. 1950 for [Provl. Govt.]
2. Subs. by *ibid* for [the United Provinces].
3. For S. O. R. see *Gaz. Extra*, d. Dec. 17, 1950, as amended by not. no. 6005-T/XXX—700(8)-T/50, d. Dec. 18, 1950, published in *Gaz. Extra*, d. Dec. 18, 1950. For discussion see L. A. Pro., d. Jan. 3, 1951, in Vol. LXXXVII, p. 108, d. Jan. 16, 1951, in Vol. LXXXIX, pp. 82—87, d. Aug. 23, 1951, in Vol. XCV, p. 241 and L. C. Pro. d. Dec. 20 and

26, 1950 in Vol. XXI, pp. 42 and 164-165 respectively, d. Aug. 21, 1951, in Vol. XXIII, p. 14.

Passed in Hindi, by the Uttar Pradesh Legislative Assembly on January 16, 1951, and by the Uttar Pradesh Legislative Council on December 26, 1950.

Received the Assent of the President on March 10, 1951, under Article 201 of the Constitution of India and was published in the *Gaz.* d. March 24, 1951.

Whereas it is expedient to amend the Motor Vehicles Act, 1939, in its application to Uttar Pradesh for the purposes hereinafter appearing;

It is hereby enacted as follows:

1. Short title and commencement.—(1) This Act may be called the Motor Vehicles (Uttar Pradesh Amendment) Act, 1950.

(2) It extends to the whole of Uttar Pradesh.

(3) It shall come into force at once.

2. Omission of Section 64-A of Act IV of 1939.—Section 64-A of the Motor Vehicles Act, 1939, shall be omitted.

THE MOTOR VEHICLES U. P. AMENDMENT ACT, 1953

U. P. ACT No. XXVIII OF 1953

CONTENTS

Sections

1. Short title, extent and commencement.

Sections

2. Amendment of Section 33 of Act IV of 1939.

(As passed by the U. P. Legislature)

AN ACT

to amend the Motor Vehicles Act, 1939, for certain purposes

Whereas it is expedient to amend the Motor Vehicles Act, 1939, in its application to Uttar Pradesh for the purposes hereinafter appearing ;
It is hereby enacted as follows :

Prefatory Note.—“It has been noticed that private car owners often let out their cars on hire as taxis without having those vehicles registered as taxi cabs. The tax for taxi cabs, is higher than that of private cars and there is, therefore, considerable loss of revenue to the State on account of this malpractice. Besides these private vehicles which are hired out deprive private operators and Roadways of considerable revenue. The owner of a private car found carrying passengers on hire is prosecuted under Section 123 (1) of the Motor Vehicles Act, 1939. It has been found very difficult to prove such cases in a court of law as the persons who hire out vehicles seldom come forward to give evidence against the owner. In order that more stringent measures to check this malpractice may be possible, the proposed Bill provides for suspension of the registration of the private vehicles found plying on hire by amending Section 33 of the Motor Vehicles Act, 1939”. vide Statement of Objects and Reasons published in U. P. Gazette Extraordinary dated July 6, 1953.

1. Short title, extent and commencement.—(1) This Act may be called the Motor Vehicles (U. P. Amendment) Act, 1953.

(2) It extends to the whole of Uttar Pradesh.

(3) It shall come into force at once.

Note.—The Act received the assent of the President on October 19, 1953 and the English translation of the Act was published in U. P. Gazette Extraordinary dated October 23, 1953.

2. Amendment of Section 33 of Act IV of 1939.—In sub-section 1 of Section 33 of the Motor Vehicles Act, 1939—

(a) after the words “rules made thereunder” the words “or that any motor vehicle is being used as a public service vehicle is without a valid permit for being used as such” shall be inserted, and

(b) at the end of the said sub-section, the words “or, in the case of a motor vehicle being used without a valid permit as a public service vehicle for a period not exceeding four months” shall be added.

THE UNITED PROVINCES MOTOR VEHICLES TAXATION ACT, 1935¹

(U. P. ACT No. V OF 1935)

CONTENTS

Sections

1. Short title, commencement and extent.
2. Definitions
3. Exemptions
4. Imposition of tax
5. Payment of tax
6. Tax payable on first liability to tax
7. Refund of tax
- 8.
- 9.
10. Declaration by person keeping vehicle for use.
11. Payment of additional tax.
12. Grant of token.
13. Penalties under this Act.

Sections

14. Recovery of tax.
15. Appeal.
16. Bar to jurisdiction of civil and criminal courts in matter of taxation.
17. Compounding of offences.
18. Cognizance of offences.
- 19.
20. Power of State Government to make rules.
21. Draft rules to be laid before chambers of the State Legislature. Amendment of the United Provinces Act II of 1916.
23. Schedule.

Amended by United Provinces Act No. X of 1941²

Amended by the U. P. Act No. XVIII of 1947³

Amended by the U. P. Act No. XXIX of 1952⁴

Adapted and modified by the Government of India (Adaptation of Indian Laws) Order, 1937.

Adapted and modified by the Adaptation of Laws Order, 1950.

(Received the assent of the Governor on July 7, 1935, and of the Governor-General on July 27, 1935, and was published⁵ under Section 81 of the Government of India Act, 1919, on August 3, 1935).

AN ACT

to provide for the imposition of a tax on motor vehicles in the United Provinces.

Whereas it is expedient to impose a tax on motor vehicles in the United Provinces for the purposes hereinafter appearing ;

1. For S. O. R., see *Gazette* 1935, Pt. VIII, p. 77. for R. S. Com. see *ibid*, 1935, Pt. VII, pp. 49—56; for discussion, see L. C. Pro., d. April 4, 1935, April 6, 1935, June 19, 1935, June 20, 1935, June 21, 1935, June 24, 1935, June 25, 1935, and June 26, 1935, in Vol. LXVII pp. 676—701, and 806, and Vol. LXVIII, pp. 53—113, 127—166, 183—230, 240—275, 336—350, and 358—382, respectively.
2. This Act was prepared by the Governor in exercise of the powers assumed by him under S. 93 of the G. of I. Act, 1935, and was reserved for the consideration of the Governor-General whose assent was received on Aug. 12, 1941, and the Act was published, with the statement, in *Gazette*, 1941, Pt. VII-A. p. 13. It was re-enacted by S. 3 and Sch. of U. P. Act XIII of 1948.
3. For S. O. R. see *Gazette Extra*, d. May 28, 1947, p. 2; for discussion

see L. A. Pro. d. June 6, 1947, in Vol. XLII, pp. 244—261, d. Nov. 4, 1947, in Vol. XLIII, pp. 123 and L. C. Pro. d. May 31, 1947, and Sept. 11 and 19, 1947, in Vol. IX, pp. 296—298, 365 and 701—702 respectively. For publication see *Gaz. Extra*, d. July 12, 1947, pp. 1-2. The Act came into force on July 1, 1947.

4. For S. O. R. see *Gazette Extra*, d. Sep. 1, 1952, pp. 1—6; for discussion see L. A. Pro., d. Sept. 3 and 5, 1952, in Vol. CVIII. d. Sept. 9, 1952, in Vol. CIX and L. C. Pro., d. Sept. 17, 1952, in Vol. XXVI, d. Oct. 11, 1952, in Vol. XXVII. For publication see *Gazette Extra*, d. Nov. 5, 1952, pp. 1—5. The Act came into force on Jan. 10, 1953, vide. not. no. 197-T. P./XXX, d. Jan. 7, 1953, in *Gaz. d. Jan. 10, 1953*, Pt. 1, p. 62.
5. See *Gazette*, 1935, Pt. VII, pp. 65 70.

And whereas the previous sanction of the Governor-General under sub-section (3) of Section 80-A of the Government of India Act has been obtained to the passing of this Act ;

It is hereby enacted as follows :

1. Short title, commencement and extent.—(1) This Act may be called the United Provinces Motor Vehicles Taxation Act, 1935.

(2) It shall come into force on such date¹ as the [State Government]² may, by notification in the [Official Gazette]³ appoint.

(3) It extends to the whole of [Uttar Pradesh]⁴.

2. Definitions.—In this Act, unless there be anything repugnant in the subject or context—

(a)⁵ "Certificate of registration" means a certificate issued by a competent authority to the effect that a motor vehicle has been duly registered in accordance with the provisions of Chapter III of the Motor Vehicles Act, 1939 ;

“(aa) Deputy Transport Commissioner (Administration)” means an officer appointed by the [State Government]⁷ to perform the duties of a Deputy Transport Commissioner (Administration) and includes an Assistant Transport Commissioner (Administration).]

(b) “[Taxation Officer]”⁸ means an officer appointed by the [State Government]⁹ to perform the duties and exercise

1. The Act came into force on Jan. 1, 1936, see not. no. 538-M. S./35-M.S. —1935, d. Sept. 6, 1935. in *Gazette*, 1935, Pt. I, p. 1167.

The Act has been extended to the merged states of Banaras and Tehri-Garhwal by the Banaras (Application of Laws) Order, 1949 and the Tehri-Garhwal (Application of Laws) Order, 1949 and extended and enforced in the merged State of Rampur by the Rampur (Application of Laws) Order, 1949 with effect from Dec. 30, 1949.

2. Subs. by the A. O. 1950 for (Provl. Govt.) which had been subs. by the A. O. 1937 for (L. G.).

3. Subs. for [Gaz.] by the A. O. 1937.

4. Subs. by the A. O. 1950 for [the United Provinces].

5. Cls. (a), (d), (e) and (g) subs. and Cl. (h) omit. by S. 2 of U. P. Act X of 1941, made by the Governor in exercise of the powers assumed by him under S. 93 of the G. of I. Act, 1935. The original Cls. ran as follows :

“(a) ‘Certificate of registration’ and ‘registration card’ mean respectively a certificate of registration and a registration card issued in accordance with rules for the time being in force made under the Indian Motor Vehicles Act, 1914.

(d) ‘Motor vehicle’ means any vehicle, carriage or other-conveyance, propelled or which may be propelled on a road by electrical or mechanical power, either entirely or partially and includes a vehicle, carriage or

other conveyance, hereinafter referred to as a “trailer”, drawn by or attached to a motor vehicle; but does not include a vehicle not exceeding 5 cwt. in weight unladen, designed or adapted for use by and used by invalids, or a vehicle constructed and used solely for the conveyance of corpses to a place of burial or cremation.

(e) ‘Owner’ includes, in relation to a motor vehicle which is the subject of a hiring agreement or hire purchase agreement the person in possession of the vehicle under that agreement.

(g) ‘Public service vehicle’ means a motor vehicle let or plied for hire for the conveyance of passengers or for the carriage of goods in public places generally or in any particular public place.

(h) ‘Registering authority’ means the authority empowered to register motor vehicles in accordance with rules for the time being in force under the Indian Motor Vehicles Act, 1914, for the registration of motor vehicles”.

6. Add clause (aa) by S. 2 of U. P. Act XVIII of 1947.

7. Subs. by the A. O. 1950 for [Provl. Govt.]

8. Subs. for [licensing officer] by S. 2 of U. P. Act X of 1941.

9. Subs. by the A. O. 1950 for (Provl. Govt.) which had been subs. by the A. O. 1937 for (L. G.).

the powers imposed or conferred upon a⁸ [Taxation Officer] by this Act.

- (c) "Local authority" includes a Cantonment authority within the meaning of the Cantonments Act, 1924.
- (d) "Motor vehicle" means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or used solely upon the premises of the owner;
- (e) "Owner" means where the person in possession of a motor vehicle is a minor, the guardian of such minor, and in relation to a motor vehicle, which is the subject of a hire purchase agreement, the person in possession of the vehicle under that agreement;
- (f) "Prescribe" and "prescribed" means respectively "prescribe" and "prescribed" by rules made under this Act;
- (g) "Public service vehicle" means any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward, and includes a motor cab, contract carriage, and stage carriage as defined in the Motor Vehicles Act, 1939;
- (h) * * *
- (i) "Route" means a road or roads or part or parts of a road or roads over which a [transport vehicle]² may be authorized to travel under a permit issued under the [Motor Vehicles Act, 1939]³;
- (j) "Tax" means a tax imposed under this Act;
- (k) "Transport vehicles" means a public service vehicle, a goods vehicle, a locomotive or a tractor as defined in the Motor Vehicles Act, 1939, other than a locomotive or tractor used solely for agriculture purposes.

3. Exemptions.—Nothing in this Act shall apply to a motor vehicle used solely for the purpose of agriculture, and the [State Government]⁶ may, by notification in the [Official Gazette],⁶ exclude⁷ either totally or partially any other motor vehicle or class of motor vehicle from the operation of this Act.

Explanation.—A motor vehicle used for transporting agricultural produce along a road shall not, for the purpose of this section, be deemed to be used solely for the purpose of agriculture.

Notes :—See rules 21 and 37 to 41.

1. See footnote (5) on the previous page.

2. Subs. for (public service vehicle) by S. 2 of U. P. Act X of 1941, made by the Governor in exercise of the powers assumed by him under S. 93 of the G. of I. Act, 1935.

3. Subs. for (Indian Motor Vehicles Act, 1914) by *ibid.*

4. Ins. by S. 2 of U. P. Act X of 1941.

5. Subs. by the A. O. 1950 for (Provl. Govt.) which had been subs. by the A. O. 1937, for (L. G.).

6. Subs. for (Gaz.) by the A. O. 1937.

7. For exclusion of motor vehicles, see not. no. 870-M. S./168-M. S.—1935 d. Nov. 26, 1935, No. 530-M. S./64-M. S.—1936, d. May 9, 1936, and No. 238-M. V./32-M. V.—1938, d. April 12, 1938. in *Gaz.* 1935, Pt. I, p. 1624, *ibid* 1936, Pt. I, p. 555, and *ibid*, 1938, Pt. I, p. 42, No. 250(1)/M. V./6 M. V.—42, dated June 25, 1942, in *Gaz.* 1942, Pt. I, p. 822, No. 2460-M. V./9—M. V.—42, d. Nov. 4, 1943, Pt. III, p. 373.

4. Imposition of tax.—(1) Save as otherwise provided by this Act or by any rule made thereunder or by any other law for the time being in force, no motor vehicle shall be used in any public place in [Uttar Pradesh]¹ unless the owner thereof has paid in respect of it a tax at the appropriate rate specified in the first schedule to this Act [within the time allowed by Section 5],² and, save as hereinafter specified, such tax shall thereafter be payable annually notwithstanding that the motor vehicle may from time to time cease to be used :

[Provided that the tax payable in respect of the period—

- (a) prior to the commencement of the U. P. Motor Vehicles Taxation (Amendment) Act, 1952, shall be determined in accordance with the appropriate rates specified in the first schedule as it stood prior to its amendment by the said Act ; and
- (b) after the commencement of the said Act, shall be determined in accordance with the rates specified in the first schedule]³.

“Provided further that the tax payable on vehicles used for the carriage of goods in connection with trade or business carried on by the owner of the vehicle but not plying for hire or reward in respect of the period—

- (a) prior to the commencement of the U. P. Motor Vehicles Taxation (Amendment) Act, 1954, be determined in accordance with the appropriate rates then specified in the first Schedule ; and
- (b) after the commencement of the said Act, shall be determined in accordance with the rates specified in article IX of the first Schedule as amended by the said Act.”

(2) For the purpose of determining the amount of the tax payable in respect of [transport vehicles plying for hire or reward]⁴ under Articles IV to VII of the first schedule to this Act, all routes in [Uttar Pradesh]⁵ shall be classified by the prescribed authority as special routes or ordinary routes, and every ordinary route shall be further classified as an A Class route, or a B Class route, or a C Class route.

5. Payment of tax.—(1) Subject to the provisions of Sections 6, 8 and 9, the tax payable under Section 4 shall be payable in advance on or before the [fifteenth]⁶ day of January in each year by the owner of a motor vehicle on a [token]⁷ to be taken out and paid for under the provisions of this Act :

Provided that the owner of a motor vehicle shall have the option of paying the tax in four equal instalments payable on or before the [fifteenth]⁸ day of January, April, July and October :

⁷ [Provided further that the difference between the enhanced tax payable under clause (b) of the [first] proviso to sub-section (1) of Sec-

1. *Subs.* by the A. O. 1950 for [the United Provinces].

2. *Ins.* by S. 3, of U. P. Act X of 1941, made by the Governor in exercise of the powers assumed by him under S. 93 of G. of the I. Act, 1935.

3. *Add.* by S. 2 of U. P. Act XXIX of 1952. The original proviso was *omit.* earlier by S. 2 of U. P. Act X of 1941 made by the Governor in exercise of the powers assumed by

him under S. 93 of G./I. Act, 1935 and re-enacted by U. P. Act XIII of 1948.

4. *Subs.* for (public service vehicles) by S. 3 of U. P. Act X of 1941.

5. *Subs.* by the A. O. 1950 for (the United Provinces).

6. *Subs.* for (seventh) by S. 4 of U. P. Act X of 1941.

7. *Subs.* for (license) by S. 4 of *ibid.*

8. *Subs.* by S. 3 of U. P. Act XXIX of 1952.

tion 4 and the tax paid for the said period in accordance with the rates specified in the first schedule as it stood prior to the commencement of the U. P. Motor Vehicles Taxation (Amendment) Act, 1952, shall be paid within three months from the date of commencement of the said Act.]”

“Provided also that the difference between the enhanced tax payable under clause (b) of the second proviso to sub-section (1) of Section 4 and the tax paid for the said period in accordance with the rates specified in the first Schedule as it stood prior to the commencement of the U. P. Motor Vehicles Taxation (Amendment) Act, 1954 shall be paid within three months from the date of commencement of the said Act”.

(2) *Delay in payment of tax.*—Where the tax in respect of a motor vehicle is not paid within the period prescribed by sub-section (1), any officer empowered by the [State Government]² in this behalf may, in lieu of prosecution under Section 13 and subject to such general directions as may be issued by the [State Government]² from time to time, accept from the owner of such motor vehicle compensation not exceeding Rs. 50 in addition to the tax.

On payment of such compensation, the owner of the motor vehicle, if in custody, shall be discharged and no further proceedings shall be taken against him in respect of the offence so compounded.

Notes :—See rules 43 and 43A.

6. Tax payable on first liability to tax.—When the tax on any motor vehicle becomes payable for the first time after the commencement of a calendar year, the tax payable, shall be one-twelfth of the appropriate annual tax for each calendar month or part of a calendar month in respect of which the tax has become payable.

7. Refund of tax.—When any person, who has paid the tax or instalment of tax, proves to the satisfaction of the taxation officer that the motor vehicle, in respect of which such tax or instalment has been paid, has not been used for a continuous period of not less than three months since the tax or instalment was last paid, he shall be entitled to

Subs. for the original sub-s. by S. 4 of U. P. Act X of 1941.

The original sub-s. ran as follows :

“(2) Notwithstanding anything contained in the Indian Motor Vehicles Act, 1914, or in any rule made thereunder, a certificate of registration shall not be granted or renewed in respect of any motor vehicle until the tax or instalment of tax payable in respect of such vehicle shall have been paid to the licensing officer; and a certificate of registration shall not be granted or renewed in respect of any motor vehicle for a period exceeding the period for which the tax or instalment thereof has been paid in respect of such vehicle”.

2. *Subs. by the A. O. 1950 for [Prov. Govt.]*

3. *Subs. for the original S. 7, which ran as follows, by S. 5 of U. P. Act X of 1941, made by the Governor in exercise of the powers assumed by him under S. 93 of the G. of I. Act,*

1935 :

“7. Where any person has paid the tax or any instalment of instalments of tax in respect of a motor vehicle and proves to the satisfaction of the licensing officer that the registration or renewal of registration of the vehicle in respect of which the tax has been paid, has been refused or cancelled he shall be entitled :

(a) where registration or renewal of registration has been refused, to a refund of the total amount of tax paid ;

(b) where the registration of a motor vehicle has been cancelled, to a refund, for each complete calendar month included in the period for which such tax or instalment has been paid and which commences after the date on which the certificate of registration has been cancelled, of an amount equal to one-twelfth of the annual rate of the tax payable in respect of such vehicle.”

a refund of a amount equal to one-twelfth of the annual rate of the tax payable in respect of such vehicle for each complete month of such period for which such tax or instalment has been paid.

Notes :—See rules 33 and 34.

8. [*Remission of tax for period during which vehicle is not in use*].***¹

9. [*Exemption from and remission of tax*]. ***¹

10. Declaration by person keeping vehicle for use.—(1)

The owner of every motor vehicle shall make a declaration in respect of it in the prescribed form stating the prescribed particulars and shall deliver the declaration within the prescribed time to the [Taxation Officer]² and shall pay to "[him]" the tax which he appears by such declaration to be liable to pay in respect of such vehicle.

(2) Where a motor vehicle is altered so as to render the owner thereof liable in this payment of an additional tax under Section 11, such owner shall make within the prescribed time an additional declaration in the prescribed form showing the nature of the alteration made and shall deliver it to the [Taxation Officer]² and shall pay to [him]² the additional tax payable under Section 11 which he appears by such additional declaration to be liable to pay in respect of such vehicle.

Notes :—See rules 10 and 11.

11. Payment of additional tax.—Where any motor vehicle in respect of which the tax has been paid is altered in such a manner as to cause the vehicle to become a vehicle in respect of which a higher rate of tax is payable, the owner thereof shall be liable to pay an additional tax of a sum which is equal to the difference between the tax already paid in respect of such vehicle and the tax which is payable in respect of such vehicle after its being so altered.* * *³

12. Grant of [token]⁴—The [Taxation Officer]² shall grant and deliver to every person, who pays to him the tax or additional tax

1. Ss. 8 & 9 omit. by S. 6 of *ibid*.

The original ran as follows :

"8. Where any person who has paid a tax or instalment of tax—proves to the satisfaction of the licensing officer that the motor vehicle, in respect of which such tax or instalment of tax has been paid, has not been used for a continuous period of not less than three calendar months since the tax or instalment of tax was last paid, then, when the tax or instalment of tax is next payable, he shall not be liable to pay any arrear of tax in respect of any complete calendar month comprised within the said continuous period and, if the tax or instalment of tax has been paid in respect of any complete calendar month, comprised within the said continuous period, he shall be entitled, in respect of every such complete calendar month, to a deduction from the amount of tax or instalment of tax, which he would otherwise be liable to pay, of an amount equal to one-twelfth of the annual rate of tax payable in respect of the said vehicle."

9. "When the owner of any motor vehicle in respect of which the tax or instalment of tax has been paid, has occasion to withdraw the said motor vehicle from use for the whole of the period in respect of which the tax or any such instalment is again payable, he may, in lieu of paying such tax or instalment, surrender to the licensing officer the registration certificate and registration card relating to the said motor vehicle and shall thereupon be exempt from liability to pay the said tax or instalment of tax in respect of the said period."

2. *Subs.* for (licensing officer) by Ss. 7, 9 and 10 of U. P. Act X of 1941, made by the Governor in exercise of the powers assumed by him under S. 93 of G. of I. Act, 1935.

3. The words "and the registering authority shall not grant a fresh certificate of registration or renew any certificate of registration in respect of such vehicle as so altered until such amount of tax has been paid" omit. by S. 8 of *ibid*.

4. *Subs.* for (licence) by S. 9 of *ibid*.

in respect of any motor vehicle, * * *^{1a} token in the prescribed form.

Notes :—See rule 14.

13. Penalties under this Act.—Whoever contravenes any of the provisions of this Act or of any rule made thereunder shall be punishable with a fine which may extend to fifty rupees, and in the event of such person having been previously convicted of an offence under this Act or under any rule made thereunder, with fine which may extend to one hundred rupees.

14. Recovery of tax.—When any person without any reasonable cause fails or refuses to pay the tax, [Taxation Officer]^{1a} may forward to the Collector, a certificate over his signature specifying the amount of tax due from such person, and the Collector, on receipt of such certificate, shall proceed to recover such tax as if it were an arrear of land revenue :

Provided that the Collector shall not so proceed before the expiry of the period within which an appeal may be preferred under Section 15, or, if such an appeal has been preferred, before it has been decided.

15. Appeal.—²[Any person aggrieved by an order relating to the assessment, imposition or recovery of tax may, within thirty days from the date of such order, [appeal]³ to the Deputy Transport Commissioner (Administration). The order passed in appeal by the Deputy Transport Commissioner (Administration) under this section shall be final and conclusive].

16. Bar to jurisdiction of civil and criminal courts in matter of taxation.—The liability of a person to pay the tax shall not be questioned or determined in any manner nor by any authority other than is provided in this Act or in rules made thereunder and no prosecution, suit or other proceeding shall lie against any officer of Government for anything in good faith done or intended to be done under this Act.

17. Compounding of offences.—Where any person is accused of an offence under Section 13, it shall be lawful for him to pay to the prescribed officer, by way of composition for such offence, a sum of money not exceeding such amount as may be prescribed, together with the amount of tax, if any, which may be due from him. Such composition shall have the effect of an acquittal and no further proceedings shall be taken against such person in respect of such offence.

Notes :—See rules 8 and 44.

18. Cognizance of offences.—No court inferior to that of a magistrate of the second class shall try any offence punishable under this Act.

19. [Application of proceeds of the tax]. * * * *

1. The words (a licence and) omit. by S. 9 of *ibid.*
- 1a. Subs. for (licensing officer) by Ss. 7, 9 and 10 of U. P. Act X of 1941, made by the Governor in exercise of the powers assumed by him under S. 93 of G. of I. Act, 1935.
2. Subs. by S. 3 of U. P. Act XVIII of 1947.
3. In respect of pending appeals, see S. 4 of the United Provinces Motor

Vehicles Taxation (Amendment) Act, 1947 (U. P. Act XVIII of 1947), which runs as follows :
All appeals pending before the Collector or the Commissioner at the commencement of this Act shall be transferred to the Deputy Transport Commissioner (Administration) who shall hear and decide them as if they had been filed before him.
4. Omit by the A. O. 1937.

20. Power of State Government to make rules.—(1) The [State Government]¹ may, subject to the condition of previous publication, make rules³ for carrying into effect the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, the [State Government]¹ may make rules² for all or any of the following purposes, that is to say :

(a) Prescribing the manner and the form in which and the authority to which applications for [payment of tax]³ under this Act shall be presented.

(b) Prescribing the form of any certificate, declaration, * * *⁴ notice, receipt, or token, and the particulars to be stated therein, and the manner of exhibiting a * * *⁴ token on a motor vehicle.

(c) Prescribing the manner in which, and the fees on payment of which, [tokens]³ granted under this Act may be transferred.

(d) Prescribing generally the authorities by whom, and the manner in which any duties in respect of or incidental to the carrying into effect of the provisions of this Act may be performed, and, in particular, prescribing the authorities by whom routes shall be classified under sub-section (2) of Section 4 and specifying the considerations by which such authorities shall be guided in so classifying routes.

⁵[(dd) Prescribing the manner in which the tax payable under the [proviso] to sub-section (1) of Section 4 shall be calculated and the procedure of payment thereof under [the second and third provisos] to sub-section (1) of Section 5.]

(e) Regulating the method of assessment, payment and recovery of the tax.

(f) [Regulating the manner in which exemptions from and refunds of the tax may be claimed and granted]⁶.

(g) Regulating the manner in which appeals may be instituted and heard.

1. Subs. by the A. O. 1950 for (Provl. Govt.) which had been subs. by the A. O. 1937 for (L. G.).

2. For rules, see notes no. 868-M. S./168-M. S.—1935, d. Nov. 26, 1935, no. 235-M.V./118-M.C.—1936, d. March 21, 1938, and no. 2260-M.V., d. Aug. 24, 1939, in *Gaz.* 1935, Pt. I, pp. 1593—1623, *ibid*, 1938, Pt. I, p. 343, and *ibid*, 1939, Pt. I, p. 596, notes. no. 2421 (2)-M.V./-6: M.V.—42, d. Oct. 10, 1942, in *Gaz.* 1942, Pt. I-A, p. 370, notes. no. 446-T/XXX—18-T.-45, d. April 11, 1946, in *Gaz.* 1946, Pt. I-A p. 139, notes. no. 1458-T/XXX—117-T.-48, d. March 31, 1949, in *Gaz.* 1949, Pt. I-A, p. 151.

3. Subs. for (licences) by S. 11 of U. P. Act X of 1941, made by the Govern-
nor in exercise of the powers assum-

ed by him under S. 93 of G. of I. Act, 1935 and re-enacted by the U. P. Act XIII of 1948.

4. The word (licence) and the words (licence or) respectively, omit. by *ibid*.

5. Add. by S. 4 of U. P. Act XXXIX of 1952.

6. Subs. by S. 11 of U. P. Act X of 1941 for the original clause which ran as follows :

“(f) Regulating the manner in which exemptions from and remissions and refunds of the tax may be claimed and granted and, the extent to which exemptions from liability to the tax may be claimed in respect of any motor vehicle brought into and used in the U. P. by a person visiting or making a temporary stay in the U. P.”

Notes :—20 (1) — See rules 17 to 20, 23, 29 and 31.

20 (2) (a) See rules 10 and 11.

20 (2) (b) See rules 10, 11, 14, 16 and 20.

20 (2) (d) See rules 7, 29 and 45.

20 (2) (e) See rules 12, 13, 22, 24 to 28, 30, 31 and 42.

20 (2) (g) See rule 43.

21. Draft rules to be laid before Houses of the State Legislature.—A draft of rules which it is proposed to make under this Act shall be laid before [both Houses of the State Legislature]² and the rules shall not be finally made until [both Houses of the State Legislature have]³ had an opportunity of expressing an opinion on them.

22. Amendment of United Provinces Act II of 1916.—The United Provinces Municipalities Act, 1916⁴ is hereby amended to the extent and in the manner stated in the second schedule to this Act.

23. [Transitory provision] * * *⁵.

FIRST SCHEDULE

Article number	Description of vehicle	Annual rate of tax
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PART A¹

Vehicles other than transport vehicles

Rs. a.

I. Cycles (including motor scooters and cycles with attachment for propelling the same by mechanical power) not exceeding 8 cwt. in weight unladen—

(a) Bicycles—

(i) not exceeding 200 lbs. in weight unladen 11 4

(ii) exceeding 200 lbs. in weight unladen 22 8

(b) Tricycles 26 4

(c) Bicycles or tricycles used for drawing a trailer or a side car in addition to the rates above. 3 0

II. Vehicles constructed and used solely for the conveyance of passengers and light personal luggage with seating accommodation for not more than six persons exclusive of the driver (including cycles and tricycles weighing more than 8 cwt. unladen)—

2. Subs. for [both chambers of the Provincial Legislature] by the A. O. 1950, which had been subs. for [the L. C.] by A. O. 1937.

3. Subs. by the A. O. 1950 for [both chambers of the Provincial Legislature have] which had been subs. for [L. C. has] by the A. O. 1937.

4. *Infra.*

5. S. 23 omit. by S. 12 of U. P. Act X of 1941 made by the Governor in exercise of the powers assumed by him under S. 93 of G. of I. Act., 1935. The original section ran as follows:

“23. (1) Every registration certificate issued under the Indian Motor Vehicles Act, 1914, in respect of a motor vehicle used or kept for use in the U. P. in force on the day on which this Act comes into force shall be deemed to be cancelled unless a declaration in accordance with S. 10 of this Act shall have been made within the period

be of one month from the date on which this Act comes into force.

(2) On such declaration being made every person who shall have paid a fee for registration or renewal of registration of the motor vehicle in respect of which the declaration has been delivered, and every person who shall have paid a tax or fee to a municipal board in respect of the said motor vehicles shall be entitled to deduction from the tax payable by him of an amount which is equal to one-twelfth of the fee or tax paid by him for every complete calendar month, of the period in respect of which such tax or fee has been paid and which is unexpired on the day on which the registration certificate of the said motor vehicle is deemed to have been cancelled under this Act.”

1. Subs. by S. 5 of U. P. Act XXIX of 1952 for Parts A and B of first Sch.

Article number	Description of vehicle	Annual rate of tax
		Rs. a.
(i)(a)	not exceeding 20 cwt. in weight unladen	37 8
(b)	exceeding 20 cwt. but not exceeding 35 cwt. in weight unladen ..	56 4
(c)	exceeding 35 cwt. but not exceeding 40 cwt. in weight unladen ..	75 0
(ii)	trailers drawn by vehicles covered by this article ..	15 0
(iii)	in the case of vehicles specified in (i), where two or more are owned by the same person—	
(a)	for that one of such vehicles on which the highest tax is leviable—the full tax,	
(b)	for each other of such vehicles—three-quarters of the tax leviable on such vehicle.	
III.	Vehicles, including cycles and tricycles weighing more than 8 cwt. unladen constructed, or adapted for use, for the conveyance of more than 6 persons (exclusive of driver)—	
(i)	if fitted wholly with pneumatic tyres, and	
(a)	not exceeding 20 cwt. in weight unladen	75 0
(b)	exceeding 20 cwt. but not exceeding 35 cwt. in weight unladen.	125 0
(c)	exceeding 35 cwt. but not exceeding 50 cwt. in weight unladen.	165 0
(d)	exceeding 50 cwt. but not exceeding 70 cwt. in weight unladen.	243 12
(e)	exceeding 70 cwt. but not exceeding five tons in weight unladen.	312 8
(f)	exceeding five tons in weight unladen for every ton or part of a ton in excess of five tons.	431 4
(g)	trailers drawn by vehicles covered by the article—	
(a)	to carry load not exceeding one ton	87 8
(b)	to carry load exceeding one ton	165 0
(ii)	if fitted with resilient tyres—the appropriate tax payable for a vehicle of the same unladen weight with pneumatic tyres together with an addition of per cent. thereon.	33½
(iii)	if fitted with non-resilient tyres—the appropriate tax payable for a vehicle of the same unladen weight with pneumatic tyres together with an addition of 66 2/3 per cent. thereon.	..

PART B

Transport Vehicles

IV.	Vehicles plying for hire for the conveyance of passengers and light personal luggage of passengers—	
(1)	with seating capacity for not more than three persons (exclusive of the driver)	67 8
(2)	with seating capacity for four persons exclusive of the driver ..	112 8
(3)	with seating capacity for more than four but not more than six persons, exclusive of the driver	172 8
(4)	with seating capacity for more than six persons but not more than 20 persons, exclusive of the driver—	
	for the first six seats	172 8
	with an addition for every seat in excess of six and up to twenty, of—	
(a)	if intended for use on an A class route	13 8
(b)	if intended for use on a B class route	9 12
(c)	if intended for use on a C class route	6 0
(5)	with seating capacity for more than 20 but not more than 32 persons, exclusive of the driver,—	
(a)	if intended for use on an A class route—	
	for the first 20 seats	382 8
	for every additional seat	13 12
(b)	if intended for use on a B class route—	
	for the first 20 seats	315 0
	for every additional seat	13 8
(c)	if intended for use on a C class route—	
	for the first 20 seats	270 0
	for every additional seat	9 12

Article number	Description of vehicle	Annual rate of tax
		Rs. a.
	(6) with seating capacity for more than 32 persons, exclusive of the driver— the tax payable under for foregoing clause for the first 32 seats with an addition, for every seat in excess of 32, of—	
	(a) if intended for use on an A class route	31 8
	(b) if intended for use on a B class route	24 0
	(c) if intended for use on a C class route	15 0
V.	Vehicles plying for hire for the conveyance of a limited number of passengers and the transport of a limited quantity of goods— The tax payable under Article IV in respect of the authorised number of passenger seats, together with an additional tax for every hundred weight of authorized load of goods—	
	(a) if intended for use on an A class route	11 6
	(b) if intended for use on a B class route	7 0
	(c) if intended for use on a C class route	4 6
VI.	Vehicles plying for hire for the transport of goods only— (A) if fitted entirely with pneumatic tyres, and—	
	(a) if intended for use on an A class route—	
	(i) for the first 15 cwt. of authorized load	280 0
	(ii) for every additional hundred weight of authorized load	9 10
	(b) if intended for use on a B class route—	
	(i) for the first 15 cwt. of authorized load	252 0
	(ii) for every additional hundred weight of authorized load	7 0
	(c) if intended for use on a C class route—	
	(i) for the first 15 cwt. of authorized load	225 12
	(ii) for every additional hundred weight of authorized load	5 4
	(B) if fitted with resilient tyres— the tax payable under this article for a vehicle of the same authorized capacity, if fitted with pneumatic tyres, together with an addition of 33 1/3 per cent. thereon.	
	(C) if fitted with non-resilient tyres— the tax payable under this article for a vehicle of the same authorized load capacity, if fitted with pneumatic tyres, together with an addition of 66 2/3 per cent. thereon.	
VII.	Vehicles plying for hire and intended for use on a special route— The appropriate tax payable under Article IV, V or VI in respect of an A class route, together with such additional tax not exceeding 50 per cent. of such appropriate tax as may be prescribed by the local Government.	
VIII.	Vehicles plying for hire in respect of which a tax has been paid under either of Article IV, V, VI or VII when intended for use in special or temporary circumstances and for a limited period on a route or routes other than those over which they otherwise ply— in addition to any tax paid under any of the foregoing articles, a tax at such weekly rate not exceeding Rs. 22 as the local Government may prescribe, for every week or part of a week during which it is intended to use any such vehicles in such special or temporary circumstances : Provided that nothing in this Article shall apply to a motor vehicle which is temporarily the subject of a private hiring agreement for the purpose of a specific journey : Provided further that no additional tax shall be payable if a motor vehicle does not use the road or roads for which it is permanently licensed during the period it is temporarily allowed to ply on a route or routes other than those in respect of which it is permanently licensed.	
IX.	“Vehicles used for the carriage of goods in connection with a trade or business carried on by the owner of the vehicle but not plying for hire or reward— (A) if fitted entirely with pneumatic tyres, and	
	(a) if intended for use on an A class route—	
	(i) for the first 15 cwt. of authorised load	210 0
	(ii) for every additional cwt. authorised of load	7 4
	(b) if intended for use on a B class route—	
	(i) for the first 15 cwt. of authorised load	189 0

Article num- ber	Description of vehicle	Annual rate of tax
		Rs. a.
	(ii) for every additional cwt. of authorised load	5 4
	(c) if intended for use on a C class route—	
	(i) for the first 15 cwt. of authorised load ; and	169 5
	(ii) for every additional cwt. of authorised load	4 0
	(B) if fitted with resilient tyres—the tax payable under this article for a vehicle of the same authorised load capacity, if fitted with pneumatic tyres, together with an addition of 33 1/3 per cent. thereon ; and	
	(C) if fitted with non-resilient tyres—the tax payable under this article for a vehicle of the same authorised load capacity, if fitted with pneumatic tyres, together with an addition of 66 2/3 per cent. thereon.	

PART C

Explanations

1. Where any motor vehicle is used for various purposes or in such a manner as to cause it to be taxable under more than one Article of this Schedule, the tax is payable on the highest appropriate rate.

2. "Unladen weight" means the weight of a vehicle when unladen, including all parts, equipment, stores, fuel, water and accumulators, which are necessary for and ordinarily used with the vehicle when working.

3. "Pneumatic tyres" means a tyre containing air inserted by mechanical pressure. "Resilient tyre" means a tyre, not being a pneumatic tyre, made of India-rubber and of such thickness as to protrude not less than three-quarters of an inch beyond the rim of the wheel. "Non-resilient tyre" means a tyre which is neither a pneumatic tyre nor a resilient tyre.

4. Where a motor vehicle is equipped with sleeping berths each sleeping berth shall for the purpose of Articles IV, V and VII be regarded as the equivalent of two passenger seats.

5. Every trailer attached to or drawn by a motor vehicle which is taxable under either of Article IV, V, VI or VII shall be regarded as a separate motor vehicle liable to the appropriate tax as prescribed by those Articles.

SECOND SCHEDULE

Amendments to the United Provinces Municipalities Act, 1916¹

1. In clause (24) of Section 2 the words "or motor car" shall be deleted and the following words substituted :

"or motor vehicles as defined in the United Provinces Motor Vehicles Taxation Act, 1935."

2. In Section 128 a colon shall be substituted for the full-stop at the end of sub-section (2) and the following words shall be added, namely,—

"Provided also that no tax under clause (iv) of sub-section (1) shall be levied in respect of any motor vehicle."

3. In clause (c) of Part H of List I appended to sub-section (I) of Section 293, between the word "vehicles" and the word "boats" the following words shall be inserted, namely,—

"other than motor vehicles."

PUBLIC WORKS DEPARTMENT

BUILDINGS AND ROADS BRANCH

MISCELLANEOUS

26th November, 1935

No. 868-M. S./168—M. S.-1935.—In exercise of the powers conferred by Section 26 of the United Provinces Motor Vehicles Taxation Act, 1935, (No. V of 1935), the Government of the United Provinces are pleased to make the following rules to carry out the provisions of the said Act. These rules were previously published for objections in notification No. 20-C/ Camp, dated the 7th September, 1935, and were laid before the United Provinces Legislative Council on 20th November 1935 :

**THE UNITED PROVINCES MOTOR VEHICLES TAXATION
RULES, 1935**

PART I*Introductory*

1. Short title and commencement.—These rules may be called the United Provinces Motor Vehicles Taxation Rules, 1935, and shall come into force on the first day of January, 1936.

2. Definitions.—In these rules, unless there be anything repugnant in the subject or context.—

- (a) "the Act" means the United Provinces Motor Vehicles Taxation Act, 1935;
- (b) "Article" means an Article in the First Schedule to the Act ;
- (c) "assessee" means a person from whom the tax is due or by whom it has been paid ;
- (d) "Form" means a Form appended to these rules;
- (e) "local authority" means a District Board, a Municipal Board, a Cantonment authority, or a Notified Area or Town Area Committee ;
- (f) "private vehicle" means a motor vehicle other than a public service vehicle as defined in Section 2(g) of the Act and includes a motor vehicle used by Air Transport Company solely for conveying passengers between its booking centres and aerodromes ;
- (g) "quarter" means a period of three calendar months expiring on 31st March, 30th June, 30th September, or 31st December ;
- (h) "section" means a section of the Act.

PART II*Of the authorities appointed under the Act*

3. Taxation Officer.—The Taxation Officer in each region of Uttar Pradesh will be the Regional Transport Officer or Assistant Regional Transport Officer appointed under the United Provinces Motor Vehicles Rules, 1940.

4. Authorities for classifying routes.—The State Transport Authority and the Regional Transport Authority constituted under sub-section (1) of Section 44 of the Motor Vehicles Act, 1939, shall be the

authorities empowered under sub-section (2) of Section 4 of the Act to classify the route over which transport vehicles may ply for hire.

5. Classifications of routes.—The State Transport Authority and every Regional Transport Authority shall, with the approval of the State Transport Authority in the case of a Regional Transport Authority classify all routes within the jurisdiction of each Authority as Special Routes of as A class, B class or C class routes.

6. Considerations to be applied when classifying routes.—When so classifying routes, every controlling authority shall be guided by the following considerations in the order in which they appear in this rule, that is to say :

- (a) the potential income which, in regard to all the circumstances of the route, it may be expected will accrue from the employment of a public service vehicle on that route,
- (b) the cost of maintenance of the road or roads or the portion or portions of any road or roads comprised within the said route,
- (c) the necessity for the development of the proposed route in the public interest.

7. Conditions of exercise of powers by controlling authorities.—Every controlling authority appointed under these rules shall, in the exercise of all functions ascribed to such authority by these rules, be at all times subject to the general control and direction of Government :

Provided that the Government may, by notification, delegate all or any of their powers of general control to the Board of Traffic and Communications (hereinafter described as the Board) constituted under Rule 4 of the United Provinces Motor Vehicles Rules, 1935 ; and when such power has been delegated, every controlling authority shall, in respect of the matters covered by such delegations, be subject to the general control and direction of the Board :

Provided also that the Board may, by resolution, delegate to a committee composed of members of the Board such of the powers delegated to it under this rule as may seem expedient.

8. Compounding Officer.—The Regional Transport Officer or the Assistant Regional Transport Officer shall be the Compounding Officer empowered in his region to compound under Section 17, contraventions of the Act or of the rules.

PART III

Of the payment and recovery of the tax and the issue of licences

9. Supply of forms.—Copies of Forms A, B, D, F, and H prescribed by these rules may be obtained on application to any Taxation Officer.

10. Presentation of declaration.—(1) Every person who, either on the commencement of the Act, or thereafter, on becoming possessed of a motor vehicle which has not been previously licensed under the Act, becomes liable to the tax, shall, within 15 days of becoming so liable, complete, sign and deliver to the Taxation Officer the declaration prescribed by Section 10 (1).

(2) Every such declaration shall be in Form A.

(3) A separate declaration shall be made in respect of every vehicle.

(4) Every declaration when completed and signed shall be delivered to the Taxation Officer either through the post or in person by the owner of the motor vehicle in respect of which it is made, or by an agent appointed by the owner for this purpose. If it is sent by post, it must be posted in time to reach the Taxation Officer before the expiry of 15 days from the date on which the liability to the tax arose.

11. Additional declaration.—(1) Every person who becomes liable to an additional tax under Section 10(2) shall, within 15 days of becoming so liable, complete, sign and deliver to the Taxation Officer a declaration in Form B.

(2) Every declaration in Form B shall be presented in person, or through the post by the owner of the motor vehicle in respect of which it is made or by an agent appointed by him for this purpose.

(3) With every declaration in Form B there shall be presented to the Taxation Officer the original certificate of registration issued in respect of the motor vehicle. If it is sent by post, it must be posted in time to reach the Taxation Officer before the expiry of 15 days from the date on which the additional tax became due.

12. Method of payment of tax.—(1) The tax shall be paid to the Taxation Officer in cash or by money order or into any treasury in a district, (the treasury chalan being then forwarded to Regional Transport Officer or Assistant Regional Transport Officer or where the business of the treasury is conducted by a branch of the Imperial Bank of India), by cheque drawn on a Bank which has a clearing account with the Imperial Bank of India and made payable to Regional Transport Officer or Assistant Regional Transport Officer.

(2) Every person who is required to make a declaration in Form A or in Form B may pay at the time of presenting such declaration the tax which is due from him.

(3) Where the tax is not paid in full at the time of the presentation of the declaration, the Taxation Officer will, on receipt of the declaration, inform the person who has delivered it (by letter, if necessary) of the tax assessed on his motor vehicle and the said person shall thereupon pay in the manner prescribed by sub-rule (1) the tax due either for one-quarter or for the calendar year.

(4) Any tax paid after 31st December, 1945, may be paid for a period of less than a year and on a monthly basis.

12-A. Change of residence or place of business.—(1) If the owner of a motor vehicle ceases to reside or have his place of business at the address recorded in the taxation office, he shall within 30 days of so doing intimate his new address to the Taxation Officer or if the new address is outside the jurisdiction of that Taxation Officer to the Taxation Officer of the place to which he has subsequently moved, and shall at the same time forward the certificate of registration to the Taxation Officer concerned in order that the new address may be entered therein.

(2) The new Taxation Officer shall communicate the altered address to the Taxation Officer of the place where the owner last resided.

13. Production of motor vehicle before Taxation Officer.—For the purpose of assessing the tax the Taxation Officer may require an owner of a motor vehicle to produce such motor vehicle before him for inspection.

14. Issue of token.—(1) When the tax or additional tax has been paid the Taxation Officer shall issue a token in Form C-II signed by himself, and shall complete and return to the person who has paid the tax the certificate in Part II of Form A or Form B, as the case may be.

(2) Such certificate shall be deemed to be a token issued under Section 12 until such time as a valid certificate of registration has been obtained in respect of the motor vehicle. Thereafter the certificate of registration shall be deemed to be a licence under this Act.

(3) The owner of every motor vehicle in respect of which a token has been issued shall retain the token in his possession and shall produce it when so required by the Taxation Officer.

(4) Every token issued under these rules shall be valid until the date of expiry endorsed thereon and shall thereafter be renewed in the manner prescribed by rule 15.

15. Renewal of token.—Every application for the renewal of a token under the Act shall be made in Form D and shall be presented, together with the certificate of registration and the token which has expired or is about to expire, to the Taxation Officer in the manner and within the time prescribed by rule 10 for the presentation of a declaration. On receipt of such application and of the tax which has become due the Taxation Officer shall grant a new token valid until the expiry of the period in respect of which the tax has been paid :

Provided that in the case of renewals for less than three months the application shall be presented not later than the day following the expiry of the token.

16. Manner of exhibiting token.—The token issued in respect of every motor vehicle shall be kept by the person to whom it is issued in such condition as to be easily legible, and shall be affixed in such a way as to be clearly legible from the front of the vehicle, to the front portion of the vehicle, on the windscreen or other conspicuous position, and on that side of the vehicle which is to the left-hand of the driver when driving :

Provided that, in the case of a trailer, the token shall be affixed in the manner prescribed by this rule to the front portion of the motor vehicle by which such trailer is being drawn.

(Note.—It is recommended, although not obligatory, that the token be affixed to or inserted in a small frame, which itself should then be affixed to the left-hand side of the windscreen in the case of a vehicle other than a cycle. In the case of a cycle it should be affixed to the handle bar.)

17. Defacing tokens.—No person shall alter, deface, mutilate or add anything to a token issued under rule 14 or rule 15, or exhibit a token on any vehicle other than the vehicle in respect of which it was issued.

18. Imitation and illegible tokens.—No person shall exhibit in the manner provided in rule 16 any imitation of a token, or use on any vehicle a token which has become illegible.

19. Loss, etc. of tokens.—If any token issued under these rules is lost, destroyed, or altered, or has become illegible, the owner of the vehicle in respect of which it was issued shall immediately report the facts to, and apply for a duplicate token to, the Taxation Officer who issued such token.

20. Duplicate tokens.—On the receipt of any such report and application as is prescribed by rule 19, the Taxation Officer shall on, payment by the applicant of a fee of one rupee, issue a duplicate token.

Such duplicate token shall be marked with the word "Duplicate" written in red ink across it and shall for the purposes of the Act and these rules be deemed to be a token.

21. Token for vehicles exempt from tax.—(1) Subject to the exceptions prescribed by rule 40, owners or persons in charge of motor vehicles which are totally exempt from payment of tax under the provisions of rule 38, shall complete and sign a declaration in Form A and present it to the Taxation Officer in the manner prescribed by rule 10, together with satisfactory proof of the claim to exemption.

(2) On receipt of such declaration and proof the Taxation Officer shall issue to the applicant, free of charge a token in Form II-C valid until the thirty-first day of December next following the date of issue of such token.

(3) Every such token shall be marked "Exempt" in the space provided for the entry of the Article under which the motor vehicle would otherwise be taxable, and shall be carried on the motor vehicle in respect of which it is issued in the manner prescribed by rule 16.

22. Issue of notice to owners of motor vehicles.—The Taxation Officer, on receiving information that any person keeps a motor vehicle for use, may require him to complete, sign and deliver a declaration in Form A in respect thereof, and may serve upon him at once a special notice in Form E. Such notice may be sent to the person by post or may be served upon him in person or (if service cannot be made upon him in person) upon any adult male member of his family. If the notice cannot be served in the manner aforesaid, it may be served by affixing it to some conspicuous part of his place of residence or business, or in such manner as the Taxation Officer may think fit.

(2) Nothing in this rule shall be deemed to absolve any person who keeps a motor vehicle from the obligation, imposed upon him by Section 10 of the Act and rule 10 above, of making a declaration in the event of no notice having been served upon him.

23. Production of token before a police officer.—Every officer enrolled under the Police Act (Act V of 1861) who is on duty and in uniform may order a motor vehicle to stop in order to ascertain whether a token therefor has been obtained. Should he discover that a token has not been obtained, or that the token has expired and has not been renewed, he shall make a report to the Taxation Officer stating the type of class of the vehicle, its registered number, if any, and the name of the owner and driver, for such action as that officer may consider necessary. No such action shall be taken by any police officer before the first day of February, 1936.

PART IV

Of the Calculation of the tax and of refunds, remissions and abatement

24. Fractions of an anna to be disregarded.—For the purpose of calculating the amount of tax payable or of any refund due in respect of a motor vehicle fractions of one anna shall be disregarded in favour of the assessee.

25. Basis of tax on private vehicles.—For the purposes of Articles I, II, III and VIII in accordance with which the assessment of a private motor vehicle will depend upon the unladen weight of the vehicle, as defined in item 2 of Part C of the First Schedule, the unla-

den weight shall be either the unladen weight as given in the manufacturer's specification, or the ascertained unladen weight of the vehicle, if, in places where a weigh-bridge is available, the Taxation Officer so directs. If an assessee in unable to state the unladen weight of his vehicle in his declaration in Form A, he may leave this entry to be made by the Taxation Officer.

26. Basis of tax on transport vehicles plying for hire.—(1)

In the case of Articles IV to VII the assessment of a transport vehicle plying for hire depends upon the authorized load of passengers or of goods or of both. The authorized load for this purpose shall be the number of passengers or the load of goods which in accordance with the United Provinces Motor Vehicles Rules, 1940, the transport vehicle plying for hire may be permitted to carry.

(2) For the purpose of the foregoing rule, every declaration in respect of a transport vehicle plying for hire shall be accompanied by the appropriate permit issued in respect of such transport vehicle plying for hire under the United Provinces Motor Vehicles Rules, 1940, and the Taxation Officer shall not accept a declaration or the tax in respect of any transport vehicle plying for hire unless the declaration is accompanied by the said permit and Part B thereof has been duly completed and signed by the registering authority.

27. Assessment of tax on transport vehicles plying for hire under Article VIII.—(1)

Any additional tax payable under Article VIII will be assessed by the Taxation Officer on the presentation to him of an application for a special and temporary permit in Form P Tem. A prescribed by rule 50 (a) of the United Provinces Motor Vehicles Rules, 1940. If no part of the roads covered by the route for which a special permit is required, is included in the route or routes covered by the permit already held, no additional tax is payable. In other cases the Taxation Officer will assess the tax at the rate of Rs. $22/(1-x/y)$ for every week or part of a week of the period specified in the certificate given by the Registering Authority/District Magistrate in paragraph B of the form of application for a special and temporary permit.

Note.—In this rule Y stands for the total length in miles of the route for which permit is already held and X stands for the portion thereof covered by the special or temporary permit.

(2) On the payment of an additional tax under Article VIII the Taxation Officer will complete and sign the form of receipt prescribed in Part C of form of application prescribed above and will return the said form, together with a token in Form C-II, to the assessee. Where no additional tax is payable the Taxation Officer will enter the words "Rs. Nil" in the form of receipt and will write in red ink across the token the words "Free-Article VIII."

(3) The form of receipt and, on the surrender of the receipt to the registering authority, the temporary permit issued under rule 51 of the United Provinces Motor Vehicles Rules, 1940, shall be deemed to be a token for the purposes of the Act.

28. Calculation of additional tax under Section 11.—The tax payable under Section 11, in respect of a vehicle which has been altered so as to make it liable to tax at a higher rate than has been paid will be calculated as follows. The Taxation Officer will assess, in accordance with Section 6, the amount of tax payable on the vehicle as so altered for the period commencing on the day on which the vehicle has been altered and ending on the last day of the period for which the tax has

been paid previously to the alteration, in like manner as if the tax became first payable on the date of alteration. He will then deduct from the tax so assessed an amount equal to one-twelfth of the annual rate at which the tax has already been paid, for every complete month in respect of which he has assessed the tax at the higher rate.

Example

A pays on 2nd January, Rs. 33 under Article III (i) (c) in respect of a private motor lorry for the quarter ending 31st March. On 15th February, he converts the lorry into an 18-seater omnibus to ply on an A class road. On the vehicle so altered the annual tax under Article IV is Rs. 223 which is equivalent to Rs. 18-9-4 per mensem. The enhanced tax, payable in accordance with Section 6, would thus be Rs. 37-2-8 for the period from 1st February to 31st March. A is entitled, however, for the two months, February and March, to a deduction of two-twelfths of Rs. 132 or Rs. 22. The additional tax payable for the period ending 31st March is thus Rs. 15-2-8 reduced, under rule 24, to Rs. 15-2. Thereafter the quarterly tax will be Rs. 55-12.

29. Alteration of a motor vehicle making it liable to a lower rate of tax.—Whenever a motor vehicle is altered in such a way that after such alteration it is liable to tax at a lower rate than the tax which has been paid, then—

- (i) if such alteration is due to its conversion from a transport vehicle plying for hire into a private motor vehicle, the owner thereof may apply for the cancellation of its registration as a transport vehicle plying for hire and on such cancellation he will be entitled to claim a refund under Section 7 in the manner prescribed by rule 32 ;
- (ii) if such alteration is not due to its conversion from a transport vehicle plying for hire into a private motor vehicle, the owner thereof may apply to the registering authority for the correction of the certificate of registration of such vehicle. When the said certificate has been corrected the owner may make a declaration in Form B and apply for the re-assessment of such vehicle. If he is satisfied that such vehicle has been altered in such a way as to make it liable to tax at a lower rate than the tax which has been paid the Taxation Officer shall, with effect from the date following the date of expiry of the token of the said vehicle, assess the said vehicle at the appropriate lower rate, and the owner thereof shall thereupon pay with effect from such date the tax as so reduced.

30. Reduction of tax on two or more private motor vehicles.

—(1) Any person who claims to pay a reduced tax under Article II (iii) in respect of any private motor vehicle owned by him in excess of one, must present simultaneously a complete declaration in Form A in respect of each vehicle possessed by him and shall make a statement of his claim under item 19 of one of the declarations. The Taxation Officer shall then determine which of the vehicles is taxable at the higher or highest rate and shall levy the tax at the full rate in respect of that vehicle, and at three-quarters of the appropriate rate in respect of every other vehicle.

(2) Where a person who has already paid a tax in respect of one or more private motor vehicles of the class described in Article II (i) becomes possessed of an additional motor vehicle in respect of which he

claims to pay a reduced tax under Article II (iii), he shall produce the certificate of registration and token relating to every vehicle in respect of which the tax has been paid and shall make a statement of his claim under item 19 of the declaration in Form A presented in respect of the additional vehicle.

(3) If the tax payable in respect of the additional motor vehicle is equal to or less than the annual tax payable in respect of any of the vehicles previously taxed, he shall be entitled to pay the tax on the additional motor vehicle at three-quarters of the appropriate annual rate.

(4) If the annual rate of tax payable in respect of the additional motor vehicle is greater than that payable on any vehicle previously taxed, the tax payable in respect of such additional vehicle shall be assessed in accordance with Section 6 at the full annual rate. From the sum so assessed, the Taxation Officer will make a deduction, in order to reduce the assessment on the vehicles previously taxed to three-quarters of the appropriate annual tax. Such deduction will be calculated as follows :

(a) Where no reduction has been made under Article II (iii) in respect of any motor vehicle previously taxed, then, for every complete calendar month which is unexpired on the day on which the additional vehicle became liable to tax and in respect of which the tax has been paid, the reduction shall be of an amount equivalent to one-forty-eighth part (or four pies in the rupee) of the annual tax so paid at the full rate ;

(b) where a reduction has already been allowed under Article II (iii) in respect of any vehicle previously taxed, the deduction shall be calculated in the manner prescribed above but on the annual rate of tax payable in respect of the motor vehicle which is taxable at the higher or highest rate under Article II, or, where all the vehicles previously taxed are taxable at the same rate, then on the annual rate of tax payable in respect of the vehicle which has been taxed at the full rate.

(5) Whenever any claim to pay a reduced tax under Article II (iii) is accepted, no token shall be issued on payment of a reduced tax so as to be valid for a period expiring after the date of expiry of any token issued in respect of any vehicle on which the tax is, or has previously been, paid at the full rate.

Examples

(i) A becomes liable to tax on 1st January in respect of one "Austin 7" motor car and one "Ford 25" motor car. He pays for the quarter ending 31st March—

(1) on the "Ford" car Rs. 11-4, *i.e.* at the full rate of Rs. 45 per annum ;

(2) on the "Austin" Rs. 5-10, *i.e.* one-quarter of Rs. 22-8 which is three-quarters of the annual tax.

Thereafter,—

(a) on 15th February he becomes possessed of a new Chevrolet motor car taxable at Rs. 45. He will pay the tax for two months under Section 6 for the period ending 31st March but at an annual rate of 33-12 ;

(b) if, however, on 15th February he had become possessed of a "Rolls Royce" motor car on which the annual tax is Rs. 60, he would, but for Article II (iii), be liable to pay at the full annual rate in respect of it with effect from 1st February, i.e. two-twelfths of Rs. 60 or Rs. 10. As, however, he has already paid the full tax on the "Ford" motor car for the months of February and March, he is entitled to a deduction of two-forty-eighths of Rs. 45, the annual rate of tax paid at the full rate on the Ford motor car. The tax payable on the third motor car will thus be Rs. 10 less Re. 1-14, or Rs. 8-2. Thereafter, he will pay at annual rates of Rs. 22-8 on the "Austin 7" Rs. 33-12 on the "Ford", and Rs. 60 on the "Rolls Royce" motor cars.

(ii) On 2nd January B pays for the year taxes on two "Austin 7" motor cars—at Rs. 30 on one and at Rs. 22-8 on the other.

On 11th March he becomes possessed of a new Chevrolet motor car taxable at Rs. 45. He will pay for 10 months at the rate of Rs. 45 less a deduction of $\text{Rs. } 10 \times \frac{1}{48} \times 30$ or Rs. 6-4. Thereafter on 10th June he buys a "Rolls Royce" motor car taxable at Rs. 60. He is liable to pay for seven months at the rate of Rs. 60 per annum less a deduction of $\text{Rs. } 7 \times \frac{1}{48} \times 45$ or Rs. 6-9.

31. Liability to pay additional tax on lapse of title to pay a reduced tax.—Whenever any person who has paid the tax at a reduced rate under Article II (iii) transfers any motor vehicle which has been taxed under Article II or alters any such vehicle in such a way that it is no longer taxable under Article II, then he shall be liable to pay, with effect from the first day of the month in which such transfer or alteration is made, an additional tax equivalent in amount to any reduction of tax which he has obtained by reason of such vehicle having been taxed under Article II and to which but for such transfer or alteration he would still be entitled.

Example

On 2nd January A pays taxes for the year on two motor cars—at the full rate of Rs. 45 on one and at the reduced rate of Rs. 33-12 on the other.

On 20th June he converts one of the two motor cars into a taxi-cab taxable at Rs. 75 under Article IV. A is thereupon liable to pay for the period 1st June to 31st December an amount equivalent to the difference between the full annual tax of Rs. 45 and the reduced rate of Rs. 33-12, i. e. $\text{Rs. } \frac{7}{12} \times \frac{11}{4}$ or Rs. 6-9.

(Note.—A is, however, entitled under Section 7 to a refund of part of the tax paid under Article II on the cancellation of the registration as a private vehicle of the vehicle on which he will pay a tax under Article IV.)

32. Refund of tax.—Refund of the tax shall be allowed in accordance with the provisions of Section 7 of the Act, but if a motor vehicle other than a transport vehicle is transferred permanently or temporarily to another Province in British India after the tax in respect of it has been paid in this Province a refund will be admissible only in respect of the quarter or quarters following the quarter in which such transfer takes place.

33. Procedure in the case of non-use of a vehicle.—(1) When the owner of a motor vehicle has occasion to withdraw his motor vehicle from use for a period exceeding three months, the registration certificate and the token issued in respect of the vehicle should be surren-

dered to the Taxation Officer, together with a declaration in Part I of Form F. The Taxation Officer will complete Part II of Form F and return it to the claimant, and will at the same time enter in the registration certificate the date of its surrender.

(2) When the owner of the motor vehicle who has so surrendered his certificate of registration and token desires to bring his motor vehicle into use again, he shall complete and sign an application in the form prescribed in Part III of Form F and shall present it to the Taxation Officer. If the owner has lost Form F which he had originally submitted, he shall, on giving a declaration to that effect and on payment of rupee one, be supplied by Taxation Officer a fresh blank Form F and the owner shall fill in Part III thereof. If the period for which the tax has been paid is unexpired on the date of such application the certificate of registration and the token will be returned to the claimant after entering the date of return in the certificate of registration. In other cases, an application in Part III of Form F must be accompanied by an application, for the renewal of token in Form D when on payment of the tax due, if any, the Taxation Officer will return the certificate of registration and will issue tokens in the manner prescribed by rule 15.

(3) The tax payable when the motor vehicle is again brought into use shall be calculated from the first day of the month in which the registration certificate is returned to the owner or in which the vehicle is again brought into use, whichever is earlier.

34. Method of claiming refunds.—(1) No claim for refund of tax under Section 7 of the Act will be admitted unless the Taxation Officer is satisfied that the motor vehicle has not been used in this province for a continuous period of not less than three months.

(a) Every person claiming refund shall present to the Taxation Officer, either by post or in person or through an agent an application in Part I of Form G. He shall either attach with the application the registration certificate showing the date of its surrender and return, or shall satisfy the Taxation Officer by other proof that the motor vehicle was not or could not have been used in the Uttar Pradesh during the period in respect of which the refund of tax is claimed.

(b) Where the refund is claimed under rule 32 on the ground of transfer of the vehicle to another province the person claiming refund shall present the application in the manner prescribed in clause (1) (a) of this rule and shall tender evidence to satisfy the Taxation Officer that the motor vehicle was not or could not have been used in the Uttar Pradesh during the period in respect of which the refund is claimed.

(2) After satisfying himself that the claim is admissible, the Taxation Officer shall issue to the applicant an order in writing for the refund which is due and shall enter the amount, and the date of the order of refund and such other particulars as the Government may direct, in the register of refunds.

(3) Every order of refund shall be encashable only at the treasury of the district in which it is issued.

(4) No application for a refund shall be entertained unless it is presented within three months from the date on which it became due.

(5) Every order of refund issued under these rules shall subject to

the provisions of sub-rule (6) be deemed to be cancelled unless it is presented for encashment within thirty days of the date of its issue.

(6) The Taxation Officer may, at any time not exceeding three months from the date of issue of an order of refund under sub-rule (2), renew it and the provisions of the sub-rule (5) shall then apply to the order of refund as though the date of renewal were the date of issue.

35 and 36. [Deleted].

PART V

Of Exemptions and Exceptions

37. Exemptions and exceptions.—Under Section 3 of the Act the State Government are pleased to exclude from the operation of the Act the classes of motor vehicles specified in rules 38, 39, 40 and 41 to the extent specified therein.

38. Complete exemption from payment of the tax.—Motor vehicles of the following classes are totally exempt from liability to taxation :

- (a) Motor vehicles (other than vehicles used for the carriage of goods or of passengers, for hire) owned and exclusively used by or on behalf of the Government of the Portuguese Settlement or the Government of India or the Government of any State of India.
- (b) Motor vehicles (other than vehicles used for the carriage of the goods or of passengers for hire) owned and exclusively used by or on behalf of any local authority situated within the Uttar Pradesh.
- (c) Motor vehicles intended for use and used as fire engines and for no other purpose.
- (d) Motor vehicles known as ambulances intended for use and exclusively used for conveying patients to and from a hospital.
- (e) Motor vehicles owned by the Society for the Prevention of Cruelty to Animals and exclusively used for the conveyance of sick animals.
- (f) Motor vehicles exempted from taxation under the Auxiliary Force Act, 1920,* the Indian Territorial Force Act, 1920*, or under any other law for the time being in force.

(Note—Vide Appendix to these rules.)

- (g) Motor vehicles kept for sale by *bona fide* dealers and manufactures when used under a valid general trade number issued in accordance with the United Provinces Motor Vehicles Rules, 1940.
- (h) Motor vehicles imported into or arriving in Uttar Pradesh under cover of "Triptyque" or "Carnet-de-passage" for a period not exceeding 30 days after arrival.

39. Partial exemption from payment of tax.—Motor vehicles of the following classes are liable to taxation to the extent herein specified :—

- (a) Motor vehicles exclusively used for the conveyance of pupils to and from a school shall be liable to the tax on private vehicles under Article II(i) (c) unless they would otherwise be taxable under either Article II(i) (a) or Article II(i) (b).

- (b) Motor vehicles exclusively used on the business of the Postal Department or of any railway or local authority shall be liable to the appropriate tax on private vehicles under Article III :

Provided that nothing in this rule shall apply to any motor vehicle used for the conveyance of passengers for hire, or in the case of a vehicle used on the business of any railway, for the transport for hire of goods other than goods which have been or are intended to be transported by rail. Such a motor vehicle will be liable to the appropriate tax on a transport vehicle plying for hire.

- (c) Motor vehicles in respect of which a tax or licence fee has been paid to a municipality or to a cantonment authority for the whole or any part of the period beginning on 1st January, 1936, and ending on 31st March, 1936, are exempt from tax to the following extent :—

- (i) where the municipal or cantonment tax or licence fee so paid is equal to or greater than the tax due under the Act—total exemption for the period ending 31st March, 1936,
 - (ii) where the municipal or cantonment tax or licence fee so paid is less than the tax due under the Act for the same period—exemption from payment of such part of the tax for that period as is equal to the municipal tax or licence fee already paid.
- (d) Public service vehicles and goods vehicles, registered under the Motor Vehicles Act, 1939, in other states of India, with which reciprocal arrangements have been arrived at and which are authorised to ply in Uttar Pradesh under counter-signature, are exempt from payment of so much of the appropriate tax as is equal to the tax paid in respect of such vehicles in that state.

Provided that no such exemption shall be allowed if public service vehicles and goods vehicles registered and taxed in Uttar Pradesh and authorised to ply in the other states of India with which reciprocal arrangements have been arrived at, are not allowed similar exemption from payment of tax in that state.

- (e) Motor vehicles, other than the transport vehicle which are transferred permanently by or temporarily from any State of India or Portuguese Settlement to Uttar Pradesh and in respect of which tax has already been paid in the other State or Portuguese Settlement, shall be exempt from taxation in this State in respect of the quarter in which such transfer takes place.

40. Exemption from obligation to make a declaration.—

Subject to the proviso that in the case of motor vehicles registered as military motor vehicles by the Master General of the Ordnance in India and motor vehicles which are exempted from taxation under the provisions of rule 38 (h) no declaration under Section 10 and no token under Section 12 shall be necessary, nothing in rule 38 or in rule 39 shall be deemed to exempt the owner of any motor vehicle from any of the directions and prohibitions contained in the Act other than the liability to pay the tax at the rate prescribed in the Act.

41. Exemption from prohibition against using an unlicensed vehicle.—Notwithstanding anything contained in Section 4 a motor vehicle may be used in a public place without a token having been issued or without a token being exhibited, in any of the following circumstances, that is to say—

- (a) when such motor vehicle is proceeding to the office of the Taxation Officer for the purpose of being assessed or of paying the tax, or
- (b) when a true declaration in Form A has been made in respect of such motor vehicle and intimation of the amount of tax due has not been received by the owner, or
- (c) when the licence issued under rule 14 or rule 15 in respect of such motor vehicle has been surrendered to the registering authority together with an application for the registration, or for the renewal of the registration, as the case may be, of the said motor vehicle and such application has not been rejected by the registering authority, or
- (d) when a token has been lost and an application has been made under rule 19 for a duplicate token, or
- (e) where intimation has been given to the Taxation Officer that the owner of such motor vehicle will prefer an appeal under Section 15 in respect of the assessment of such motor vehicle and such appeal has been preferred but has not been decided.

Notification No. 343 Gazette/XXX-1119-T-51 dated July 6, 1956, published in U. P. Gazette dated July 14, 1956, Pt. I-A, p. 944.

In exercise of the powers conferred by Section 3 of the U. P. Motor Vehicles Taxation Act, 1935 (Act No. V of 1935), the Governor is pleased to grant partial exemption to the extent of 33 per cent of the tax payable under the First Schedule to the said Act with effect from the date of issue of notification till March 31, 1957, in respect of new motor vehicles with newly fabricated goods and bus bodies and used for the carriage of goods, spare parts, tyres and tubes, etc. of motor vehicles from port town to up-country centres.

PART VI

Miscellaneous Provisions

42. Transfer of tokens.—(1) Every transfer of ownership of a motor vehicle shall, unless such transfer shall have been reported to the registering authority under Section 31 of the Motor Vehicles Act, 1939, be reported, within fourteen days of the transfer, both by the transferor and the transferee to the Taxation Officer to whom tax in respect of the said uvehicle was last paid. The transferee shall at the same time produce before the Taxation Officer the token issued in respect of the said motor vehicle and shall pay a transfer fee of one rupee. The Taxation Officer shall, if he is satisfied that the transfer has taken place, substitute in the token and in his register of token the name of the transferee for that of the registered owner and shall return the token to the transferee.

(2) When a transfer of ownership of a motor vehicle has been effected under this rule or under Section 31 of the Motor Vehicles Act, 1939, the transferee shall for the purposes of the Act be deemed to be the owner.

43. Appeals.—(1) Under Section 15 any person aggrieved by an order relating to the assessment, imposition or recovery of the tax may, within a period of thirty days from the date of such order, appeal from such order to the Deputy Transport Commissioner (Administration). The appeal shall be in writing and shall state the grounds on which the appellant disputes the order. Deputy Transport Commissioner (Administration) may, after hearing the appellant and making such enquiry from the Taxation Officer as he may consider necessary, confirm, modify, or set aside the order.

(2) If the owner of a motor vehicle has paid a tax of a greater amount than that to which he is found on appeal to be liable, the Taxation Officer shall on the production of the appellate order issue an order in writing for the refund of the amount of tax so paid in excess, and the provisions of rules 34(3) and 34(5) shall apply to such order as if it were an order of refund issued under rule 33.

(3) The Deputy Transport Commissioner (Administration) may transfer any appeal before him to Assistant Transport Commissioner (Administration) for disposal or withdraw any appeal so transferred.

43-A. Appeals—Inspection of files.—(a) The Deputy Transport Commissioner (Administration), U. P. or Assistant Transport Commissioner (Administration), U. P. or Taxation Officer may, in his discretion, allow any person interested in an appeal to inspect files connected with appeals on payment of a fee of annas 8 for the first hour and annas 4 for each subsequent hour and a court-fee of annas 4 on the application payable under item 31 of notification No. M-600/X-501, dated March 25, 1942 (Appendix C-III of Stamp Manual).

(b) the Deputy Transport Commissioner (Administration), U. P. or Assistant Transport Commissioner (Administration), U. P. or Taxation Officer may in his discretion give any person interested in an appeal preferred under Section 15 of the Act, copies of any document connected with the appeal, on payment of a fee of Rs. 1-8 per copy of each document and a stamp-duty payable under Article 24 of Schedule 1-B of the Indian Stamp Act, 1899.

44. Composition of offences.—The sum of money which may be accepted in composition for an offence against the Act or a breach of these rules shall be such amount as may, in the discretion of the Regional Transport Officer or Assistant Regional Transport Officer be appropriate to the nature and gravity of the offence or breach of the rules :

Provided that in no case shall a sum of money exceeding the maximum fine which could be imposed by a competent court under Section 13, be demanded or accepted in composition for any offence against the Act or for any breach of these rules.

45. Duties of Taxation Officer.—(1) On the issue of every token in Form C-II the Taxation Officer will enter in the counterfoil token in Form C-I the particulars therein prescribed.

(2) The Taxation Officer will maintain such registers of receipts and refunds and such other records as the Government may direct.

(3) Where the tax is paid for a whole year it shall be necessary only to issue the token in Form C-II prescribed for the fourth quarter.

FORM A

[See Section 10(1) and rules 10, 12, 14, 21, 22, 25, 30, 33, 41 and 45]

Declaration by owner of a motor vehicle under Section 10

(*See instructions at the foot of this form before completing it)

PART I

(To be completed by the owner of the motor vehicle)

I _____
residing at _____
hereby apply for the issue of a token under Section 12 of the United Provinces Motor Vehicles Taxation Act in respect of the motor vehicle described below and for the registration of the said motor vehicle under the Indian Motor Vehicles Act.

1. Full name of owner _____
2. Full address _____
3. Trade name of vehicle (*i. e.* Ford, Chevrolet, etc.) _____
4. Year of manufacture _____
5. Horse power _____
6. Number of cylinders _____
7. Engine number _____
8. Chassis number _____
9. Type and colour of body* (*e. g.*, touring or saloon) _____
10. Width and class of each tyre* _____
11. Unladen weight* _____
12. In the case of all vehicles other than motor cycles and motor cars*—Load capacity _____
13. In the case of a heavy motor vehicle only—
 - (i) Axle weight _____
 - (ii) Diameter of each wheel _____
14. The vehicle is to be used (a) as a private vehicle or (b) as a transport vehicle plying for hire.*
15. Type of vehicle*—
 - A.—In the case of a private vehicle—
 - (i) bicycle with _____ sidecar
without _____ trailer
 - (ii) tricycle with _____ sidecar
without _____ trailer
 - (iii) vehicle used solely by invalids ;
 - (iv) vehicle used solely for the conveyance of not more than seven passengers inclusive of the driver (*i. e.* ordinary private motor car) ;
 - (v) motor hearse ;
 - (vi) other private vehicle (*i. e.* motor lorry, steam or motor tractor, motor bus or motor car with more than seven seats in all).
 - B.—In the case of a transport vehicle plying for hire—
 - (i) vehicle for the conveyance of passengers only ;
 - (ii) vehicle constructed partly for the conveyance of passengers and partly for the transport of goods ;
 - (iii) vehicle for the transport of goods only ;
 - (iv) vehicle for the conveyance of passengers or of goods alternatively.

16. In the case of a transport vehicle plying for hire only*—

(a) maximum number of passenger seats exclusive of the driver's seat and of the attendant's or conductor's seat, if any—

plus (b) maximum authorized load in hundredweights—
or

(c) class of route for which a permit has been issued (i. e. whether special, A class, B class or C class),

(area within which the vehicle will ply, in the case of a taxi cab.

17. I claim exemption from payment of the tax under rule— and attach hereto proof of my claim.

18. I hereby declare that the above is a true statement of my name and address and of the particulars of the motor vehicle described herein.

19. (In the case of private motor vehicle only)—I claim to pay the tax at the reduced rate under Article II(iii) in respect of the above vehicle on the following grounds :—

20. (In the case of transport vehicles plying for hire only)—I attach to this declaration the permit issued to me under the United Provinces Motor Vehicles Rules, 1940, in respect of the transport vehicles plying for hire described herein.

Signature of applicant—

Date—

PART II

(To be completed by the Regional Transport Officer or Assistant Regional Transport Officer)

Certified that the motor vehicle described above is exempt from tax under rule— and that token no— book no.—, dated—has been issued.

or

Certified that according to the above declaration the annual tax payable on the motor vehicle described therein is Rs.—

Certified also that a sum of Rs.—has been paid as tax in respect of the said vehicle for the period ending—19—, and that, subject to the correctness of the above declaration, this licence is valid until—19—. A token no.—, dated—has been issued to the applicant.

Signature of Regional Transport Officer.

Date—

Region—

PART III

(To be completed by the Registering Authority)

Certified also that the motor vehicle herein described has been registered under the United Provinces Motor Vehicles Rules, 1940, and that a registration certificate valid uptill—19—, has been issued and that the registration number of the vehicle has been entered in the token.

Particulars of vehicle—

Name of registered owner—

Address—

Registered no of vehicle—

Signature of Regional Transport Officer.

Date— Region—

*INSTRUCTIONS

Item 9—The ordinary open type of private car body is known as “touring” and the covered-in-body as “saloon”. If the colour of the body is at any time changed, the fact of such change shall be reported when the licence is next renewed.

Item 10—Here *insert* whether “pneumatic,” “resilient” or “non-resilient.” “Pneumatic” means containing air under pressure.

“Resilient” means made of India-rubber but not pneumatic and protruding at least three-quarters of an inch beyond the rim of the axle, *i.e.*, generally solid rubber tyres.

“Non-resilient” means neither pneumatic nor resilient (*i.e.*, generally iron or steel tyres).

Width”.—*e.g.*, 20” × 5”.

Item 11—Unladen weight may be entered according to the maker’s specification or where a weigh-bridge is available, the ascertained weight. Should the applicant be unaware of the unladen weight the item may be left blank to be completed by the Taxation Officer.

“Unladen weight” should be in hundredweights, except in the case of bicycles not exceeding 8 hundredweight in weight unladen, when it should be in pounds (lb.).

Item 12—Load capacity means the load which according to the manufacturer’s specification the vehicle is constructed to carry.

Motor car means a motor vehicle which is designed and used for the conveyance of persons and which has seating accommodation for not more than seven persons, inclusive of the driver.

Item 13—A heavy motor vehicle means a vehicle of which the unladen weight exceeds two tons, but does not include a private motor car constructed for the conveyance of not more than seven persons.

Items 14, 15 and 16—Strike out so much of the descriptions given as is not applicable to the motor vehicle to be described.

Item 16—Will be completed by reference to the permit issued in respect of the motor vehicle. Where a transport vehicle plying for hire is authorized to carry partly goods and partly passengers, strike out the word “or” before sub-item (b). Where it is authorized to carry a full load either of passengers or of goods strike out the word “plus” only.

Items 17 and 19—Strike out if no claim is made.

WARNING

The delivery of a declaration which is not true is an offence punishable under Section 13 of the United Provinces Motor Vehicles Taxation Act, 1935.

FORM B

[See Section 10(2) and rules 11, 12, 14, 29 and 45]

Additional declaration under Section 10(2)**PART I***(To be completed by the applicant.)*

I-----hereby declare
 that I have made on*-----
 -----the following alterations in my motor
 vehicle registered number-----covered by the registration cer-
 tificate and token attached hereto.

Description of alterations.

Signed-----

Date-----

*Here insert date of alteration.

PART II*(To be completed by the Regional Transport Officer or
 Assistant Regional Transport Officer.)*

Article under which tax was paid previously to alteration of vehicle

Amount of tax paid for the period-----
 to-----Rs.-----

Article under which tax is payable on the vehicle as altered-----

Amount of tax ordinarily payable from-----*
 to-----Rs.-----

Deduct for-----complete months at Rs.-----per
 mensem Rs.-----Net amount of tax payable for the period ending-----
 Rs.-----

Received Rs.-----as additional tax for the period ending

Token no.-----, book no.-----issued to applicant

Registered certificate and token corrected and completed on-----

Regional Transport Officer / Assistant Regional Transport Officer.

Date-----Region-----

*Here insert date of alteration.

FORMS C-I AND C-II*(Section 12 and rules 14, 15, 21, 27, 36 and 45)***Token and counterfoil token****FORM C-I**

Counterfoil Token

Book no.-----

(Form C-1)

**UNITED PROVINCES MOTOR VEHICLES TAXATION
 ACT, 1935**

-----Quarter

Token no. _____ issued to _____
 Tax paid under Article _____ of SCHEDULE
 I for the period _____ to _____
 Rs. _____

Registered no. of motor vehicle _____

Date _____

Taxation Officer.

FORM C-II

(Circular in shape)

UNITED PROVINCES MOTOR VEHICLES TAXATION ACT, 1935

Token no. _____, Book no. _____
 Article no. _____ Rs. _____
 Valid until _____
 Issued to _____

Make of vehicle _____
 Engine no. _____, Chassis no. _____
 Registered no. _____

Regional Transport Officer

Assistant Regional Transport Officer.

FORM D

[Section 10 (1) and rules 15, 33 and 36]

Application for Renewal of Token

PART I

(To be completed by the owner of a motor vehicle)

1. I _____
 residing at _____
 hereby apply for the renewal until _____ 19 of the token issued
 under the United Provinces Motor Vehicles Taxation Act in respect of
 my motor vehicle registered as no. _____

2. I attach hereto registration certificate issued in respect of the
 said motor vehicle for perusal and return to me.

3. I further surrender herewith the token no. _____
 issued for the period ending _____ 19 .

4. I claim an abatement of tax under Section 8 for the period
 commencing on _____ and ending
 on _____ and in support of this claim attach
 Form H.

Signature of applicant _____

Date _____

PART II

(To be completed by the Regional Transport Officer or Assistant Regional Transport Officer.)

CERTIFIED that—

(1) the claim to abatement has ^{been} ~~not been~~ admitted ;
 (2) that a sum of Rs. _____ is due and has been paid as instalment of tax in respect of motor vehicle no. _____

(3) that a token no. _____, dated _____ has been issued valid for the period ending _____ 19 .

CERTIFIED that the Registered no. of motor vehicle no. _____ has been renewed for the period ending _____ and that the token issued in respect of the said motor vehicle has been completed.

Signature of Regional Transport Officer or Assistant
Regional Transport Officer

Region _____

Date _____

FORM E

(Rule 22)

Notice to owner of a motor vehicle

To _____

Address _____

Take notice that you are hereby required to fill up, sign and deliver to the undersigned the form of declaration enclosed in respect of every motor vehicle kept by you for use, and to pay the tax due on every such vehicle before the expiration of 15 days from the date of service of this notice.

Failure to deliver the declaration or to pay the tax constitutes an offence under Section 13 of the United Provinces Motor Vehicles Taxation Act, 1935.

Signature of Taxation Officer.

Date _____ 19 _____

FORM F

(Section 7 and rule 33)

Surrender of Registration Certificate and tokens

PART I

(To be completed by the owner of the motor vehicle when surrendering the registration certificate)

I _____ residing at—

_____ hereby declare that I have withdrawn from use my motor vehicle of which the registration no. is _____ and that I do not intend to use the said vehicle again for a period of not less than three months.

I hereby surrender the certificate of registration and the tokens issued in respect of the said vehicle.

Signature of applicant _____

Date _____

PART II

(To be completed by the Taxation Officer when returning the form to the owner)

Received from _____ Registration
certificate no. _____ and token no. _____
Book no. _____
valid for the period commencing on _____ 19
and ending on _____ 19

Signature of Taxation Officer.

Dated _____ 19

PART III

(To be completed by the owner of the motor vehicle when applying for return of the registration certificate)

I _____ hereby apply for the return of the registration certificate described in Part I above.

*An application for the renewal of token in Form D is also attached hereto.

Signature of applicant.

Dated _____

*To be struck out if not necessary.

FORM G

(Section 7 and rule 34)

Application for Refund of Tax

PART I

(To be completed by the claimant)

I _____
_____ having paid a tax of Rs. _____ in respect of my motor vehicle for the period ending _____ hereby apply for a refund of the said tax on the ground that the said vehicle was not used in Uttar Pradesh from _____ to _____

*I attach hereto the certificate of registration in respect of the said vehicle in support of my claim.

*Not necessary when refund is claimed on the ground of transfer of the vehicle from Uttar Pradesh to another State.

Signature of claimant.

Date _____ 19 .

PART II

(To be completed by the Taxation Officer)

Claim for refund arose on——— and was presented on———

Refund admitted for the period commencing——— and
ending———.

Amount to be refunded Rs.———

Refund voucher no.——— dated——— for Rs.
——— delivered/sent to applicant personally/by post.*Signature of Taxation Officer.**Date———19 .*

APPENDIX

Section 14 of the Indian Territorial Force Act (XLVIII of 1920)

[See rule 38 (f)]

14. Power to make regulations—(1) The Commander-in-Chief of His Majesty's Forces in India may make regulations consistent with this Act and the rules made thereunder providing generally for all details connected with the organization and personnel of the Indian Territorial Force and for the duties, military training, clothing, equipment, allowances and leave of persons enrolled.

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may specify the courses of training or instruction to be followed by any person or class of persons enrolled.

Section 16 of the Indian Territorial Force Act (XLVIII of 1920)

Exemption from local taxation—No person shall be liable to pay any municipal or other tax in respect of any horse, bicycle, motor bicycle, motor car, or other means of conveyance which he is authorized by regulations made under Section 14 to maintain in his capacity as a member of the Indian Territorial Force.

Section 34 of the Auxiliary Force Act (XLIX of 1920)

Exemption from local taxation—No enrolled person shall be liable to pay any municipal or other tax in respect of a horse, bicycle, motor bicycle, motor car or other means of conveyance which he is authorized by a general or special order of the competent military authority to maintain in his capacity as a member of the Auxiliary Force, India.

UTTAR PRADESH MUNICIPALITIES ACT, 1916

(U. P. ACT No. II OF 1916)

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As Amended and adapted

(Received the assent of the Lieutenant-Governor on the 11th May, 1916 and

of the Governor-General on the 15th June, 1916, and was published under Section 81 of the Government of India Act, 1915, on the 24th June, 1916.)

AN ACT

to consolidate and amend the Law relating to Municipalities in the Uttar Pradesh.

Whereas it is expedient to consolidate and amend the law relating to municipalities in the United Provinces; It is hereby enacted as follows :

Prefatory Note :—The following extract from the Statement of Objects and Reasons may be usefully noticed :—

The object of this Bill is to consolidate and amend the law relating to Municipalities in the United Provinces. At present administration by Municipal Board is governed by many separate Acts passed at different dates and consequently containing some provisions not in complete harmony with one another. The Bill, if it becomes law, will repeal the several enactments specified in Schedule VIII of the Bill and re-enact their provisions with certain amendments, omissions and additions. It will also incorporate with them certain provisions borrowed from the Municipal Acts of other provinces of which the utility has been demonstrated elsewhere or the want experienced here.

The main purpose of the Bill is to amend the law governing the internal organisation of Municipal Boards, so as partially to relieve Boards and their chairmen of the burden of the details of administration which falls upon them under the existing Acts. With this object the Bill extends the system of delegation of functions to Committees and to officers of the Boards and introduces, in the larger Municipalities, the new post of Executive Officer. The effect on existing practice of the proposed provisions as to delegation will be rather to define, and place beyond doubt the legality, of that practice than to alter it to any considerable extent.

In the matter of control by the Provincial Government, and its Officers, of boards and of their officers, little substantial change is made in the existing law. So far as that control relates to the appointment, conditions of service, of officers of the board, the provisions of the Bill follow the recommendations of the Decentralization Commission. The transference to Commissioners of certain powers hitherto exercised by the Provincial Government and the provision for the delegation to them of other such powers are also in accordance with the recommendations of that Commission. The distinction made in the Bill between the larger municipalities, which are termed cities, and the smaller ones, is with the view of keeping the Provincial Government more particularly informed of the administration of the former.

With regard to municipal enterprise, it is proposed to remove the statutory obligation of boards to supply water to private premises, although such obligation may be reimposed, if circumstances permit, by rule made by the Provincial Government. In the absence of such a rule, the supply of water to private premises will be a matter of business arrangement between the board, as supplier or undertaker, and the public, as customers.

In clauses 271 to 276 the Bill defines the right of suit against boards, and against members, officers and servants of boards, in respect of negligent acts and other torts committed by them. With one exception these clauses in substance reproduce the English law on the subject. The exception is more apparent than real. In England a municipal officer may be sued personally for an illegal act done by him in the course of his service, but the damage recovered against the officer is usually paid by the board. As a matter of practical convenience, it has been considered advisable to adopt a provision of the Madras District Municipalities Acts, 1884, and, by barring personal suits against members, officers, and servants of the board for acts done in good faith in the course of their service, to require intending plaintiff to seek their remedy by directly proceeding against the board.

The language and arrangement of the Bill departs considerably from that of the existing Municipalities Act. The larger sections of the existing Act have been divided into sub-sections and clauses with a view to rendering the comprehension of the matter more expeditious. For the single term "rules" the three separate expressions "rules" "regulations" and "byelaws" have been adopted. This, it is believed, will facilitate reference and avoid confusion of ideas. The expression "rules" is restricted to orders

of the Provincial Government designed to fill in the outlines of the Bill. The expression "regulation" is equivalent to what in England are called standing orders, that is to say orders made by the board, or by Government on behalf of a board, in respect of its internal organisation or procedure. The word "byelaws" is used in its ordinary sense of local legislation by Government or the board controlling or defining private right in the interests of the health, safety, and convenience of the community. *vide* U. P. Gazette 1915, Pt. VII, p. 404. Forreport of Select Committee, *see ibid*, 1915, Pt. VII, p. 645; and for proceeding in Council, *see ibid*, 1915, Pt. VII, p. 503 and *ibid* 1916, pp. 202 and 409.

CHAPTER I

Preliminary

1. Short title, extent and commencement.—(1) This Act may be called the United Provinces Municipalities Act, 1916.

²[(2) It shall extend³ to the whole of Uttar Pradesh.]

(3) It shall come into force on the first day of July, 1916.

2. Definitions.—In this Act, unless there is something repugnant in the subject or context—

(1) "Board" means a municipal board and shall include, in any case where a power is expressed as being conferred or a duty as being imposed on a board, a committee appointed by a board and any member, officer or servant of a board authorized or required by or under this Act to exercise the power or perform the duty.

(2) "Building" means a house, hut, shed or other roofed structure, for whatsoever purpose and of whatsoever material constructed, and every part thereof, but shall not include a tent or other such portable * * * temporary shelter.

(3) "Byelaw" means a byelaw made in exercise of a power conferred by this Act.

(4) "City" means a municipality having a population of 100,000 or more inhabitants and any municipality which is a city by virtue of a notification under Section 3.

(5) "Compound" means land, whether enclosed or not which is the appurtenance of a building or the common appurtenance of several buildings.

1. See *Gaz.*, 1916, Pt. VII. pp. 483—618.

2. *Subs.* for sub-section (2) of S. 1 by the A. O. 1950.

3. This Act has been extended to the areas mentioned in column 1 of

this table under the Act or Order mentioned in column 2 and enforced in such areas under notification, if any, mentioned in column 3 with effect from the date mentioned in column 4 against each such area.

Areas	Act or Order under which extended	Notification, if any, under which enforced	Date from which enforced
1	2	3	4
1. Rampur district.	Rampur (Application of Laws) Order, 1949.	No. 177-(c)-J, d. July 31, 1949.	July 31, 1949.
2. Banaras district.	Banaras (Application of Laws) Order, 1949.	No. 2781 and 2782/XVII, d. Sep. 6, 1950.	Sep. 6, 1950.
3. Tehri-Garhwal district	Tehri-Garhwal (Application of Laws) Order, 1949.	Ditto.	Ditto.

4. The words [and merely] *omit.* by S. 2(1) of U. P. Act VII of 1949.

(6) "Drain" includes a sewer, pipe, ditch, channel or any other device for carrying of sullage, sewage and polluted water or rain-water or sub-soil water, together with pail depots, traps, sinks, cisterns, flush tanks, and other fittings appertaining thereto.

(7) "Inhabitant" used with reference to a local area means any person ordinarily residing or carrying on business or owning or occupying immovable property therein.

(8) "Lodging-house" includes a collection of buildings, or a building, or part of a building used for the accommodation of pilgrims and travellers.

(9) "Municipality" means any local area which is a municipality by reason of a notification issued under Section 3 or, subject to the provisions of the said section, any local area which was a municipality at the time immediately preceding the commencement of this Act.

(10) "Notification" means a notification published in the [Official Gazette]¹.

(11) "Occupier" includes an owner in actual occupation of his own land or building.

(12) "Officer of the board" means a person holding for the time being an office created or continued by or under this Act but shall not include a member of the board or of a committee as such.

(13) "Owner" includes a person for the time being receiving or entitled to receive the rent, or a part of the rent, of any land or building whether on his own account or as trustee, or as agent for a person or for a religious or charitable purpose, or as receiver appointed by or under the order of a court or who would so receive the same if the land or building were let to a tenant.

(14) "Part of a building" includes any wall, under-ground room or passage, verandah, fixed platform, plinth, staircase or door step attached to, or within the compound of an existing building or constructed on ground which is to be the site or compound of a projected building.

(15) "Petroleum" means petroleum as defined in the Indian Petroleum Act, 1899¹.

(16) "Population" used with reference to any local area means the population according to the returns of the most recent Government * * *² census for the time being.

³[(17) (i) "Prescribed" means prescribed by or under this Act or rules made thereunder or by or under any other enactment.

(ii) "Prescribed authority" means an officer or a body corporate appointed by the [State Government]⁴ in this behalf by notification in the official Gazette, and, if no such officer or body corporate is appointed, the Commissioner.]

(18) "Public place" means a space, not being private property, which is open to the use or enjoyment of the public whether such space is vested in the board or not.

(19) "Public street" means a street—

(a) which is declared a public street by the board under the provision of Section 221, or

1. Subs. for [Gaz.] by the A. O. 1937.

2. See now the Petroleum Act, 1934 (Act XXX of 1934), in the U.C.A., Vol IX, p. 257.

3. The word [provincial] omit. by A. O.

1937.

4. Subs. by S. 2(2) of U. P. Act VII of 1949.

5. Subs. by the A. O. 1950 for [Provl. Govt.]

(b) which with the consent, express or implied, of the owner of the land comprising the street, has been levelled, paved, metalled, channelled, sewered or repaired out of the municipal or other public funds.

(20) "Regulation" means a regulation made in exercise of a power conferred by this Act.

(21) "Rule" means a rule made in exercise of a power conferred by this Act.

¹(21-A) The expression 'Schedule bank' shall have the meaning assigned to it in the Reserve Bank of India Act, 1934.

(22) "Servant of the board" means any person in the pay and service of the board.

(23) "Street" means any road, bridge, footway, lane, square, court, alley or passage which the public or any portion of the public has right to pass along and includes on either side, the drains or gutters and the land up to the defined boundary of any abutting property, notwithstanding the projection over such land of any verandah or other superstructure.

(24) "Vehicle" means a wheeled conveyance capable of being used on a street, and includes a bicycle, tricycle ¹[or motor vehicle as defined in the United Provinces Motor Vehicles Taxation Act, 1935⁶].

(25) "Water for domestic purposes" shall not include water for cattle, or for horses, or for washing carriages, where the cattle, horses or carriages are kept for sale or hire or by a common carrier, or water for any trade, manufacture or business or for building purpose or for watering gardens or for fountains or for any ornamental purpose.

(26) "Water works" includes all lakes, tanks, streams, cisterns, springs, pumps, wells, reservoirs, aqueducts, cuts, sluices, mains, pipes, culverts, engines, hydrants, standpipes, conduits, and all machinery, lands, buildings, bridges and things for supplying or used for supplying water.

(27) Where a power is expressed as being conferred on any authority to require a person to do one thing or to do another thing the authority may, in its discretion, require the person to do either thing or if the nature of the case permits, both of the things, or may give the person the option of doing whichever of the things he chooses.

Building—meaning—A chabutra would not come within the definition of building unless it can be considered as a part of a building². A roof consisting of reed screen spread over bamboo poles cannot be a building. Shed made of straw and slanting on either side supported on four poles cannot invariably be considered to be a building, but what is ordinarily called a *chappar* may be a building if its dimensions are sufficiently large³.

Street.—A land or street over which the public as such have no right to pass along, does not become "public" only because there is an under-ground sewer of old times within the meaning of Section 2 of Act II of 1916.⁴ A culvert constructed by the owner of a house over the drain connecting the house with street cannot be regarded as a public street or even a street as defined in the Act⁵. The term street as defined in the Act includes a public street. It is the wider term and "public street" is used in the Act only when it is intended to distinguish a street declared to be a public street by the Board under the provisions of Section 221 from other roads and

1. *Ins.* by U. P. Act No. 1 of 1955.
2. *Subs.* for the words [or motor] car by S. 22 and Second Schedule of U. P. Act V of 1935.
3. *Brij Nandan Prasad v. Emperor*, 1945 A 232; *Malboo Miran Abdul Ghani v. State*, 1953 A 548 = A L J 231. But see *Munshi Lal v. Emperor*, 1933 A

657.

4. *Bala Prasad v. Muzammil Husain*, 1934 A 190.
5. *Municipal Board, Banaras v. Ram Kishna Dass*, 1922 A 386.
6. *Rahim Baksh v. Municipal Board, Bulandshahr*, 1939 A 213.

streets¹. The transfer of land of a public lane treating it as a public street is ineffective and it remains a public lane². See also *Nawab Jan v. Notified Area Committee, Auraiya*³, for the meaning of street.

"Carrying on business"—meaning.—It is primarily the place of residence of a person where his income can be said to be earned and the fact that he works at another place is not material⁴. A person who is discharging the duties of his office as Subordinate Judge cannot be said to be "carrying on business" within the Municipal area if he resides in the Cantonment area and not in the Municipal area⁵.

CHAPTER II

Constitution and Government of Municipalities

Declaration of Municipalities

3. Declaration and definition of municipalities and cities.—

(1) The [State Government⁶] may by notification⁷—

(a) declare any local area to be a municipality ;

(b) declare any municipality having a population of less than 100,000 inhabitants to be a city ;

(c) define the limits of any municipality ;

(d) include or exclude any area in or from any municipality ; and

(e) cancel any notification under any of the preceding clauses.

(2) The power to issue a notification under sub-section (1) shall be subject to the condition of the notification being issued after the previous publication required by Section 4 and [notwithstanding anything in this section, no area which is, or is part of, a cantonment, shall be declared to be a municipality or be included in a municipality under this section]⁸ * * *

Note.—For List of Municipalities under this section, see notes under Section 9 *infra*.

Detached Areas-Effect.—There is nothing in the Act which prohibits the combination of detached areas and which makes it compulsory that the entire area must be a compact area¹⁰.

4. Procedure preliminary to notification.—¹¹(1) Before the issue of a notification under Section 3 the State Government shall publish in the official Gazette and cause to be affixed at the office of the District Magistrate and at one or more conspicuous places within or adjacent to the local area concerned, a draft in Hindi of the proposed notification along with a notice stating that the draft will be taken into consideration on the expiry of the period as may be stated in the notice.

1. *Arjun v. Man Singh*, 1934 A 338=56 A 784.

2. *Mst. Masooma Bibi v. Mohammad Said Khan*, 1942 A 77.

3. 1948 A 273=1948 A L J 309.

4. *D. B. Madge v. Municipal Board, Sitapur*, 1937 O 468.

5. *Gauri Shankar Verma v. Municipal Board Sitapur*, 1933 O 91=10 OWN 24.

6. *Subs.* by the A. O. 1950 for (Provl. Govt.) which had been *subs.* by the A. O. 1937 for (L. G.).

7. For list of municipalities, see Notes.—No. 1906/XI-6H, d. July 5, 1916, No. 3399-IV/XI-41, d. Aug. 28, 1935, No. 889-C-N/XI-R. B. (58) d. Aug. 29, 1935, No. 913-C. N./XI-R. B.-4, d. Sep. 4,

1935.

No. 3427/XI-R.B.-4, d. Sep. 30, 1935,

No. 764(4)XI-R. B.-21, d. April 13, 1937,

No. 3603 and 3603-I/XI-431, d. Sep. 2, 1942, and pp. 237-241 of M. M. 1952 edition.

8. *Subs.* for the words (where the not. as in respect of a local area which comprises or contains the whole or a portion of a cantonment with the previous sanction of G. G. in C.) by the A. O. 1937.

9. The word "or" and cls. (b) and (c) omit. by S. 2 and Sch. I of Act XXXVIII of 1920.

10. *Ajmeri Sheikh v. Emperor*, 1934 A 39 =1934 A L J 80.

11. *Subs.* by U. P. Act No. 1 of 1955.

(2) The [State Government]¹ shall, before issuing the notification, consider any objection or suggestion in writing which it receives from any person, in respect of the draft, ²[within the period stated].

5. Effect of including area in municipality.—When by reason of a notification under Section 3 any local area is included in a municipality, such area shall thereby become subject to all notifications, rules, regulations, bylaws, orders, directions, issued or made under this or any other enactment and in force throughout the municipality at the time immediately preceding the inclusion of the area.

The Municipal Board

6. Incorporation and general functions of municipal boards.—In every municipality there shall be municipal board and every such board shall be a body corporate by the name of the municipal board of the place by reference to which the municipality is known, having perpetual succession and a common seal, and, subject to any restriction or qualification imposed by this or any other enactment, vested with the capacity of suing and being sued in its corporate name, of acquiring, holding and transferring property, movable or immovable, and of entering into contracts.

Income—if immovable property.—The income from the land to be used by licensees is immovable property, and therefore may be transferred or leased like any other immovable property. The charge is one for the use of immovable property and the right to recover the money once it becomes due is in itself immovable property which can be transferred by the Board to the person who is given authority to collect³.

7. Duties of municipal board.—(1) It shall be the duty of every board to make reasonable provision within the municipality for—

- (a) lighting public streets and places;
- (b) watering public streets and places;
- (c) cleaning public streets, places, and drains, removing noxious vegetation, and abating all public nuisances;
- (d) regulating offensive, dangerous or obnoxious trades, callings or practices;
- (e) removing, on the ground of public safety, health or convenience, undesirable obstructions and projections in streets or public places;
- (f) securing or removing dangerous buildings or places;
- (g) acquiring, maintaining, changing, and regulating places for the disposal of the dead;
- (h) constructing, altering, and maintaining public streets, culverts, markets, slaughter-houses, latrines, privies, urinals, drains, drainage works and sewerage works;
- (i) planting and maintaining trees on road-sides and other public places;
- (j) providing a sufficient supply of pure and wholesome water where the health of the inhabitants is endangered by the insufficiency or unwholesomeness of the existing supply, guarding from pollution water used for human consumption and preventing polluted water from being so used;
- (k) registering births and deaths;
- (l) establishing and maintaining a system of public vaccination;

¹Subs. by the A. O. 1950 for (Provl. Govt.) which had been subs. by the A. O. 1937 for (L. G.).

²Subs. by U. P. Act No. 1 of 1955.

³*Mewa Ram v. Municipal Board, Mathura*, 1939 A 466 (473, 478, 481).

- (m) establishing, maintaining or supporting public hospitals and dispensaries, and providing public medical relief;
 - [(mm) establishing and maintaining maternity centres and child welfare clinics;]¹
 - [(n) maintaining or contributing to the maintenance of veterinary hospitals;]²
 - [(nn) establishing and maintaining or granting aid to institutions of physical culture;]³
 - (o)⁴ establishing and maintaining primary schools;
 - (p)⁵ rendering assistance in extinguishing fires and protecting life and property when fires occur;
 - (q)⁵ maintaining and developing the value of property vested in, or entrusted to the management of the board;
 - (r)⁵ [prompt attention to official letters and preparation of]⁶ such returns, statements and reports as the [State Government]⁷ requires the board to submit; and
 - (s)⁵ fulfilling any obligation imposed by law upon it.
- (2) * * * * *

Scope.—The authority given to the Municipal Board by Section 273 read with Section 7 is not absolute. The authority is conditional and does not absolve the Board from liability if nuisance results from its acts⁹.

Improvement-Meaning.—The erection of an accommodation for an idol can be regarded as maintaining or developing the value of the property vested in the Board. The idea is that there must be some increase in value or utility, and does not apply where the land has been burdened with some obligation¹⁰.

S. Discretionary functions of boards.—(1) A board may make provision, within the limits of the municipality¹¹ [and with the sanction of the [Prescribed Authority]¹² outside such limits,] for—

- (a) laying out, in areas whether previously built upon or not, new public streets and acquiring land for that purpose and for the construction of buildings, and their compounds, to abut on such streets;
- (b) constructing, establishing* * *¹³ maintaining [or contributing to the maintenance of]¹⁴ public parks, gardens, libraries, museums, [reading rooms, radio receiving stations, lepers homes, orphanages, babyfolds and rescue homes for women]¹⁵ lunatic asylums, halls, offices, dharamshalas, rest-houses, encamping grounds, poor-houses, dairies, baths, bathing ghats, washing places, drinking fountains, tanks, wells, dams, and other works of public utility;
- (c) reclaiming unhealthy localities;

1. *Ins.* by S. 4 (1) of U. P. Act VII of 1949.

2. *Ins.* by S. 3 of U. P. Act V of 1932.

3. *Ins.* by S. 4 (2) of U. P. Act VII of 1949.

4. Renumbered by S. 3 of U. P. Act V of 1932.

5. Renumbered by S. 3 of U. P. Act V of 1932.

6. *Subs.* for the word (preparing) by S. 3 of U. P. Act XVII of 1934.

7. *Subs.* by the A. O. 1950 for (Provl. Govt.) which had been *subs.* by the A. O. 1937 for (L. G.).

8. *Omit.* by S. 4 (3) of U. P. Act VII

of 1949.

9. *Municipal Board, Lucknow v. Mst. Ram Devi*, 1941 O 52=1940 O W N 834. But see *Rahim Bux v. M. B., Bulandshahr* 1939 A 213.

10. *Hafiz Mohammad Ismail v. M. B., Banaras*, 1941 A 392.

11. *Ins.* by S. 2 (1) of U. P. Act II of 1919.

12. *Subs.* for [Commissioner] by S. 60 of U. P. Act VII of 1949.

13. *Subs.* comma for the word (or) by S. 5 (1) of U. P. Act VII of 1949.

14. *Ins.* by *ibid.*

15. *Ins.* by *ibid.*

- (d) furthering educational objects by measures other than the establishment and maintenance of primary schools ;
- (e) taking a census, and granting rewards for information which may tend to secure the correct registration of vital statistics ;
- (f) making a survey ;
- (g) giving relief, on the occurrence of local calamities, by the establishment and maintenance of relief works or otherwise ;
- (h) making arrangements for the confinement, [removal]¹ or destruction of stray dogs, [or other animals]¹ ;
- (i) securing or assisting to secure suitable places for the carrying on of any trade or manufacture mentioned under sub-head (a) or heading G of Section 298 ;
- (j) establishing and maintaining a farm or factory for the disposal of sewage ;
- ⁸[(jj) making arrangements for preparation of compost manure from nightsoil and rubbish]
- (k) constructing, subsidizing or guaranteeing tramways, rail-roads or other means of locomotion and electric [or gas]² lighting or electric [or gas]² power works ;
- (l) holding fairs and exhibitions ; * * *
- ⁴[(ll) preparing and executing House and Town Planning Schemes ;
- (lll) taking measures to promote trade and industry ;
- (llll) supply of milk ;
- (lllll) establishing Labour Welfare Centres for its employees and subsidizing the activities of any association, union or club of such employees by grant or loan, for its general advancement ;
- (llllll) organizing or contributing to Municipal Board Unions ;]
- (m) adopting any measure, other than a measure specified in Section 7 or in the foregoing provisions of this section likely to promote the public safety, health, or convenience ; [and]⁵
- ⁶[(mm) making provision for removal of social disabilities of scheduled castes and backward classes, as may be prescribed by the [State Government] ;]⁷
- (mmm) taking measures for the control of beggary ;]
- ⁹(n) the doing of anything whereon expenditure is declared by the [State Government]¹⁰ or by the board with the sanction in the case of cities of the [State Government]² and in the case of other municipalities of the [Prescribed Authority]¹¹ to be an appropriate charge on the municipal fund.]

¹²[Provided that the [State Government]¹⁰ may in respect of any

1. *Ins.* by S. 5 (2) of U. P. Act VII of 1949.

2. *Ins.* by S. 5 (3) of *ibid.*

3. The word [and] *omit.* by S. 2 (2) of U. P. Act II of 1919.

4. *Ins.* by S. 5 (4) of U. P. Act VII of 1949.

5. *Add.* by S. 2 (2) of U. P. Act II of 1919.

6. *Ins.* by S. 5 (5) of U. P. Act VII of 1949.

7. *Subs.* by the A. O. 1950 for (Provl.

Govt.).

8. *Ins.* by Act No. VII of 1953.

9. *Add.* by S. 2 (2) of U. P. Act II of 1919.

10. *Subs.* by A. O. 1950 for (Provl. Govt.) which had been *subs.* by A. O. 1937 for (L. G.).

11. *Subs.* by S. 60 of U. P. Act VII of 1949 for [Commissioner.]

12. *Ins.* by S. 5 (6) of U. P. Act VII of 1949.

municipality or all municipalities, by notification in the official Gazette, declare any of the functions mentioned in this section to be a duty of the board or boards concerned and thereupon the provisions of this Act shall apply thereto as if it had been a duty imposed by Section 7.]

(2) A board may make provision for the extension beyond the limits of the municipality of the benefits of any municipal undertaking:

Provided that no provision shall be made for the extension of the benefits of a municipal undertaking for the supply of water to any local area which comprises or contains the whole or a portion of a cantonment without the previous sanction of the [Central Government]¹.

* * * * *

Public Utility.—The work of public utility has to be for the benefit of the public in a wider sense and under the provisions of the statute the Municipal Board has no power to apply Municipal funds for founding or maintaining places of worship for the use of one community to the exclusion of others, unless it is done incidentally or indirectly in the interest of public safety or convenience².

The extension of benefit under Section 8 (2) would cover a case only when a municipal board undertakes to supply water to the residents of a locality directly and is entitled to control the supply. A contract to sell water in bulk by a Municipal Board to a Cantonment Board outside the municipal limits is a trade or business carried on by the Municipal Board⁴.

⁵[**8-A.—Definition.** In this Chapter unless there is anything repugnant in the subject or context—

- (a) "Assembly Rolls" mean the electoral rolls prepared for the Assembly constituencies under and in accordance with the provisions of the Representation of the People Act, 1950 ;
- (b) "Director of Elections (Local Bodies)" means an officer appointed by the State Government in this behalf by notification in the official *Gazette* ;
- (c) "election" means an election to fill a seat on a board ;
- (d) "elector" in relation to a ward means a person whose name is for the time being entered in the electoral roll of that ward ;
- (e) "Order" means an Order published in the official *Gazette* or in the manner prescribed ;
- (f) "Scheduled Castes" mean the castes specified in the Constitution (Scheduled Castes) Order, 1950 ; and
- (g) "ward" means a ward provided by Delimitation Order under Section 11-B.]

9. ⁶[Normal composition of the Board.—Except as otherwise provided by Section 10, a board shall consist of—

- (a) a President ; and
- (b) the elected members who shall be not less than 15 and not more than 50 as the State Government may, by notification in the official *Gazette*, specify.]

Revised List of Elective Seats to the various Municipalities in Uttar Pradesh.

No. 564-M. E./XI-E—19-1949.

Dated Lucknow, July 15, 1949.

NOTIFICATIONS.

In exercise of the powers conferred by Section 9 (1) (b) of the Uttar Pradesh

1. Subs. by A. O. 1937 for [G. G. in C.]

2. Sub-s. (3) omit. by S. 3 of U. P. Act II of 1919.

3. *Hafiz Mohammad Ismail v. Municipal Board, Banaras*, 1941 A 392.

4. *The Municipal Board, Agra v. The Commissioner of Income-Tax*, 1951 A 582.

5. Ins. by Act No. VII of 1953.

6. Ins. by Act No. VII of 1953.

Municipalities Act, 1916 (II of 1916) and in supersession of all notifications on the subject in so far they relate to the municipalities mentioned in the schedule the Governor is pleased to notify that the total number of elected seats for these municipalities shall be as shown against each municipality in column 3 of the schedule hereto appended.

SCHEDULE

Serial number.	Name of Municipality.	Total number of elective seats.	Serial number.	Name of Municipality.	Total number of elective seats.
1	2	3	1	2	3
1	Dehra Dun	.. 36	44	Bisalpur	.. 22
2	Saharanpur	.. 39	45	Farrukhabad	.. 32
3	Hardwar Union	.. 32	46	Kanauj	.. 24
4	Deoband	.. 25	47	Etawah	.. 32
5	Roorkee	.. 28	48	Kanpur	.. 72
6	Banda	.. 28	49	Fatehpur	.. 28
7	Kairana	.. 24	50	Allahabad	.. 60
8	Meerut	.. 40	51	Jhansi	.. 36
9	Baraut	.. 22	52	Mau	.. 23
10	Ghaziabad	.. 27	53	Lalitpur	.. 24
11	Hapur	.. 28	54	Orai	.. 24
12	Bulandshahr	.. 29	55	Kalpi	.. 22
13	Khurja	.. 28	56	Konch	.. 24
14	Sikandrabad	.. 24	57	Banaras	.. 58
15	Koil (Aligarh)	.. 39	58	Mirzapur	.. 33
16	Hathras	.. 31	59	Jaunpur	.. 28
17	Atrauli	.. 24	60	Ghazipur	.. 28
18	Sikandra Rao	.. 22	61	Ballia	.. 24
19	Mathura	.. 36	62	Gorakhpur	.. 36
20	Brindaban	.. 24	63	Basti	.. 25
21	Agra	.. 60	64	Azamgarh	.. 24
22	Firozabad	.. 31	65	Almora	.. 24
23	Mainpuri	.. 24	66	Kashipur	.. 23
24	Etah	.. 22	67	Haldwani	.. 24
25	Soron	.. 22	68	Unnao	.. 25
26	Kansganj	.. 28	69	Rae Bareilly	.. 24
27	Jaleel	.. 22	70	Sitapur	.. 29
28	Barcilly	.. 43	71	Khairabad	.. 22
29	Bijnor	.. 29	72	Hardoi	.. 24
30	Chandpur	.. 25	73	Shahabad	.. 24
31	Dhampur	.. 23	74	Sandila	.. 24
32	Nagina	.. 28	75	Lakhimpur	.. 26
33	Najibabad	.. 28	76	Faizabad	.. 36
34	Budaun	.. 32	77	Tanda	.. 28
35	Ujhani	.. 22	78	Gonda	.. 28
36	Sahaswan	.. 25	79	Balrampur	.. 28
37	Moradabad	.. 41	80	Bahraich	.. 28
38	Chandausi	.. 28	81	Sultanpur	.. 22
39	Amroha	.. 31	82	Bela (Pratapgarh)	.. 23
40	Sambhal	.. 32	83	Nawabganj (Bara Banki)	.. 24
41	Shahjahanpur	.. 37	84	Muzaffarnagar	.. 32
42	Tilhar	.. 24	85	[Biswan]	.. 22
43	Pilibhit	.. 28			

Legislative changes.—The words and figures “Biswan...22” were added by Notification No. 1268-M. E./XI-R. B.—113-50, published in Gazette, dated August 5, 1950, Part III, p. 336.

No. 680-M. E./XI-19-1949.

Dated August 2, 1940.

In exercise of the powers conferred by Section 9 (1) (b) of the Uttar Pradesh Municipalities Act, 1916 (II of 1916) the Governor is pleased to notify that the total number of elective seats for the Notified and Town Areas converted into Municipalities which have come into existence from August 1, 1949, shall be as shown against each in column 3 of the Schedule hereto appended.

SCHEDULE

Serial number.	Name of Municipality.	Total number of elective seats.	Serial number.	Name of Municipality.	Total number of elective seats.
1	2	3	1	2	3
1	Shamli	.. 24	12	Kaimganj	.. 20
2	Hamirpur	.. 20	13	Auraiya	.. 20
3	Rishikesh	.. 20	14	Mahoba	24
4	Pilkhuwa	.. 20	15	Rath	22
5	Mawana	.. 22	16	Deoria	23
6	Dibai	.. 22	17	Gaura Barhaj	21
7	Fatehpur Sikri	.. 20	18	Mau	28
8	Kosi	.. 22	19	Pihani	22
9	Shikohabad	.. 22	20	Bilgram	22
10	Aonla	(will be published later)	21	Gola Gokarannath	20
			22	Hasanpur	23
			23	Chunar	21
11	Bindki	.. 22			

¹[**9-A. Reservation of seats for Scheduled Castes.**—(1) Seats shall be reserved for Scheduled Castes in each board.

(2) The number of seats reserved under sub-section (1) shall bear as nearly as may be the same proportion to the total number of seats on the board as the population of the Scheduled Castes in the municipality bears to its total population as determined at the last census held under the provisions of the Indian Census Act, 1950.]

10. Power of State Government to vary normal composition of Board.—²[The [State Government]² may, if satisfied in the case of any municipality that its circumstances render inadvisable the application thereto of the provisions of Section 9, declare by notification that the board shall notwithstanding anything contained in this Act, be constituted as follows, namely :

(a) *Nominated members.*—such number of members to be nominated by the [State Government]¹ as may be specified ;

(b) *Elected members.*—such number of elected members to be elected in such manner and by such persons or class of persons as may be specified ; and

(c) *President.*—the President, who shall possess such qualifications, and be elected in such manner, as the [State Government]¹ may prescribe:

⁴[Provided that the provisions of this section shall not be applicable to a municipality which was already constituted under this Act on the day immediately preceding the commencement of the U. P. Municipalities (Amendment) Act, 1952, unless the municipality is one which, the State Government are satisfied, is subject, to substantial seasonal variation of night population.]

⁵[**10-A. Term of Board.**—(1) Except as provided in Section 31 or 31-A, the term of every board shall be four years :

Provided that the State Government may, by notification in the official Gazette, extend from time to time the term of all or any of the boards, so, however, that the total extension in the case of any board does not in the aggregate exceed two years.

1. Ins. by U. P. Act VII of 1953.

2. Subs. by the A. O. 1950 for (Provl. Govt.)

3. Subs. by S. 7 of U. P. Act VII of

Subs. by U. P. Act VII of 1953.

Subs. by U. P. Act I of 1955.

(2) The term of a board shall begin from the date of notification issued in pursuance of Section 56 that the board has been constituted.]

11. [*Deleted by U. P. Act VII of 1953*].

Delimitation

11-A. ¹[**Delimitation of wards.**—(1) For purposes of elections to a board there shall be wards provided by order under Section 11-B.

(2) The representation of each ward shall be on the basis of population of that ward as ascertained at the last census and shall as far as possible be in the same proportion as the total number of seats for the municipality and its population.

11-B. Delimitation Order.—(1) The State Government shall by order, determine :

(a) the wards in which each municipality shall be divided for purposes of elections to the board ;

(b) the extent of each ward ;

(c) the number of seats allotted to each ward ; and

(d) the number of seats, if any, reserved for the Scheduled Castes.

(2) The draft of the order under sub-section (1) shall be published for objections for a period of not less than 15 days a copy of the same shall be sent to the board or boards concerned for comments.

(3) The State Government shall consider any objections and the comments filed under sub-section (2) and the draft order shall, if necessary, be amended, altered or modified accordingly and thereupon it shall become final.

11-C. Amendment of Delimitation Order.—The State Government may, after consulting the board concerned, by a subsequent order, alter or amend the final order under sub-section (3) of Section 11-B.]

12. * * * 2

Electoral Rolls

³[**12-A. Elections on the basis of adult suffrage.**—Except as provided in Section 10, the election of the members of a board shall be on the basis of adult suffrage.

12-B. Electoral Roll for every ward.—(1) There shall be an electoral roll for every ward which shall be prepared in accordance with the provisions of this Act under the supervision of the Director of Elections (Local Bodies).

(2) The Electoral Registration Officer shall, for purposes of preparation of the electoral rolls for the ward, adopt the Assembly rolls relating to the area comprised in the said ward and publish the same in the manner prescribed, and upon its publication it shall, subject to any alteration, addition or modification made under or in accordance with this Act, be the electoral rolls for the ward prepared in accordance with this Act.

(3) Where any addition, omission, alteration or other amendment is made under the Representation of the People Act, 1950, or the Rules framed thereunder, in the Assembly rolls relating to the area of the ward, a similar amendment shall be made in the corresponding electoral roll of the ward.

12-C. Qualifications for electors.—Subject to the provisions of Section 12-D, every person who is qualified to be registered in the

1. *Ins.* by U. P. Act VII of 1953.

2. *Omit* by S. 9 of U. P. Act VII of

1949.
3. *Ins.* by U. P. Act VII of 1953.

Assembly electoral roll relating to the area comprised in the ward or whose name is entered therein shall be entitled to be registered in the electoral roll of the ward.

12-D. Disqualifications for registration in an electoral roll.—(1) A person shall be disqualified for registration in an electoral roll if he is disqualified for registration in the Assembly rolls.

(2) The name of any person who becomes so disqualified after registration shall forthwith be struck off the electoral roll of the ward in which it is included :

Provided that the name of any person struck off the electoral roll of a ward by reason of disqualification under sub-section (1) shall forthwith be reinstated in that roll if such disqualification is, during the period such roll is in force, removed under the provisions of this Act, or under any other law authorizing such removal.

Scope.—The meaning that should be placed on the section is that a person shall not be qualified for registration in an electoral roll if he is not qualified for registration in the Assembly roll. It further follows that an objection may be taken to the retention of a name on the municipal electoral roll on any of the grounds specified in Section 16 (1) or clause (a) of Section 19 of the Representation of Peoples Act. The Electoral Registration Officer would therefore have jurisdiction to enter into the question whether a person has the necessary residential qualification for his name to be entered on the electoral roll¹.

12-E. Registration to be in one ward and in one place.—No person shall be entitled to be registered in the electoral roll for more than one ward in the same municipality.

(2) No person shall be entitled to be registered in the electoral roll for any ward more than once.

12-F. Electoral Registration Officers.—The electoral roll for each ward shall be prepared by an Electoral Registration Officer who shall be such officer of the State Government or of a local authority as the State Government may designate or nominate in this behalf.

12-G. Annual revision of electoral rolls.—The electoral roll for each ward shall be revised every year in accordance with the provisions of this Act.

12-H. Order re : electoral rolls.—The State Government may, by order, make provisions in respect of the following matters concerning the electoral rolls, namely,—

- (a) the date on which the electoral rolls first prepared and subsequently prepared under this Act shall come into force and their period of operation ;
- (b) the correction of any existing entry in the electoral rolls on the application of the elector concerned ;
- (c) the correction of clerical or printing error in the electoral rolls ;
- (d) the inclusion in the electoral rolls of the name of any person—
 - (i) whose name is included in the Assembly rolls for the area relating to the ward but is not included in the electoral roll of the ward or whose name has been wrongly included in the electoral roll of some other ward ; or
 - (ii) whose name is not so included in the Assembly rolls and who is otherwise qualified to be registered in the electoral roll of the ward ;

- (e) annual revision of the electoral rolls ;
- (f) custody and preservation of the electoral rolls ; and
- (g) generally for all matters relating to the preparation and publication of the electoral rolls.]

Conduct of Elections

13. [Deleted by U. P. Act VII of 1953.]

¹[**13-A. General Elections.**—(1) Except as provided in Section 31 or 31-A there shall be a general election to a board before the expiry of the term or extended term, as the case may be, of the board under Section 10-A on such date or dates as the State Government may, by notification in the official Gazette, appoint in that behalf.

(2) When a new municipality is created under Section 3, the first board thereof shall, as far as may be, be constituted in accordance with the provisions, of this Act relating to general election to a board.

13-B. Conduct of elections to be supervised by the Director of Elections (Local Bodies).—The Director of Elections (Local Bodies) shall supervise the conduct of elections under this Act.

13-C. Qualification for membership of the Board.—A person shall not be qualified to be chosen to fill a seat on a board, unless—

- (a) in the case of a seat reserved for the Scheduled Castes he is a member of any of these castes and is an elector for any ward in the municipality ;
- (b) in the case of any other seat, he is an elector for any ward in the municipality.

13-D. Disqualifications for membership.—A person, notwithstanding that he is otherwise qualified, shall be disqualified for being chosen as, and for being, a member of a board if he—

- ²(a) is a dismissed servant of a Local Authority, the Central Government or the Government of a Part A, Part B or Part C State, and is debarred from re-employment thereunder ; or
- (b) is debarred from practising as a legal practitioner by order of any competent authority ; or
- (c) hold any place of profit in the gift or disposal of the board ; or
- (d) is disqualified under Section 27 or 41 ; or
- (e) is disqualified under Section 146 of the Representation of the People Act, 1951, or
- (f) is in the service of the State or the Central Government or any local authority, or is a District Government Counsel or an Additional or Assistant District Government Counsel or an Honorary Magistrate or an Honorary Munsif or an Honorary Assistant Collector ; or
- (g) is in arrears in the payment of municipal tax or other dues in excess of one year's demand to which Section 166 applies ; or
- (h) is suffering from leprosy ; or
- (i) is an undischarged insolvent ; or
- (j) has been sentenced to imprisonment for a term exceeding six months or to transportation for contravention of any order made under the Essential Supplies (Temporary

Powers) Act, 1946, or the U. P. Control of Supplies (Temporary Powers) Act, 1947, or for an offence which is declared by the State Government to imply such moral turpitude as to render him unfit to be a member, or has been ordered to find security for good behaviour in consequence of proceedings taken under Section 109 or 110 of the Code of Criminal Procedure, 1898, such sentence or order not having been subsequently reversed or remitted or the offender pardoned :

Provided that in cases of (a) and (b) the disqualification may be removed by an order of the State Government in this behalf :

Provided further that in the case of (g) the disqualification shall cease as soon as the arrears are paid.

¹[*Explanation.*—A Government treasurer shall not be deemed to be in the service of the State or of the Central Government within the meaning of clause (f).]

13-E. Right to vote.—(1) No person who is not, and except as expressly provided by this Act, every person who is, for the time being entered in the electoral roll of any ward shall be entitled to vote in that ward.

(2) No person shall vote at an election in any ward if he is subject to any of the disqualifications referred to in Section 12-D.

(3) No person shall vote at a general election in more than one ward and if a person votes in more than one such ward, his votes in all such wards shall be void.

(4) No person shall at any election vote in the same ward more than once, notwithstanding that his name may have been registered in the electoral roll for that ward more than once, and if he does so vote, all his votes in that ward shall be void.

(5) No person shall vote at any election if he is confined in a prison whether under a sentence of imprisonment or transportation or otherwise, or is in the lawful custody of the police :

Provided that nothing in this sub-section shall apply to a person subjected to preventive detention under any law for the time being in force.

13-F. Method of voting.—(1) In plural member wards every elector shall have as many votes as there are members to be elected, but no elector shall give more than one vote to any one candidate.

(2) If an elector gives more than one vote to any one candidate in contravention of the provisions of sub-section (1), then, at the time of counting of votes, not more than one of the votes given by him to such candidate shall be taken into account and all other votes given by him to such candidate shall be rejected as void.

13-G. Order regarding conduct of elections.—The State Government may, by order, make provision with respect to the following matters concerning conduct of elections, that is to say—

(a) issue of notifications for general elections ;

(b) the appointment, powers and duties of Returning Officers, Assistant Returning Officers, Presiding Officer and Polling Officers and clerks ;

(c) appointment of dates for nomination, scrutiny, withdrawal and polling ;

- (d) the manner of presentation and the form of nomination paper, the requirements for a valid nomination, scrutiny of nominations and withdrawal of candidature ;
- (e) appointment and duties of election agents, polling agents and counting agents ;
- (f) procedure at general elections including death of candidate before poll, procedure in contested and uncontested elections, special procedure at elections in wards where seats are reserved for Scheduled Castes ;
- (g) identification of votes ;
- (h) hours of polling ;
- (i) adjournment of poll and fresh poll ;
- (j) manner of voting at elections ;
- (k) scrutiny and counting of votes including recount of votes and procedure to be followed in case of equality of votes and declaration of results ;
- (l) the notification of the names of the members elected for the various wards of a municipality and the due constitution of the board ;
- (m) return or forfeiture of deposits ;
- (n) manner in which votes are to be given by the presiding officers, polling agents or any other person who being an elector for a ward is authorized or appointed for duty at a polling station at which he is not entitled to vote ;
- (o) the procedure to be followed in respect of the tender of vote by person representing himself to be an elector after another person has voted as such elector ;
- (p) the safe custody of ballot boxes, ballot papers and other election papers, the period for which such papers shall be preserved and the inspection and production of such papers ; and
- (q) generally on all matters relating to conduct of elections.

13-H. Bye-elections.—(1) Subject to the provisions of sub-section (2) and Section 13-1, when the seat of a member, elected to a board becomes vacant or is declared vacant or his election is declared void, the District Magistrate shall, in consultation with the board, by a notification in the Official Gazette, call upon the ward concerned to elect a person for the purpose of filling the vacancy caused before such date as may be specified in the notification and the provisions of this Act and of the Rules and Orders made thereunder, shall apply, as far as may be, in relation to the election of a member to fill such vacancy.

(2) If the vacancy so caused be a vacancy in a seat reserved in any such ward for the Scheduled Castes, the notification issued under sub-section (1) shall specify that the person to fill that seat shall belong to the Scheduled Castes.

13-I. Certain casual vacancies not to be filled.—Where a vacancy occurs on a board by reason of death, resignation, removal or avoidance of an election of an elected member and the term of office of that member would, in the ordinary course of events, have determined within one year of the occurrence of the vacancy, the State Government may direct that the vacancy be left unfilled until the next general elections.

13-J. Electoral Offences.—(1) The provisions of Sections 126, 127, 128, 129, 130, 131, 132, 134, 135 and 136 of Chapter III of Part

VII of the Representation of the People Act, 1951, shall have effect as if—

- (a) the references therein to an election were a reference to an election held under this Act ;
- (b) for the word "constituency" the word "ward" had been substituted ;
- (c) in Section 130 for the words "100 yards" the words "25 yards" had been substituted ; and
- (d) in Sections 134 and 136 for the words "by or under this Act or under the Representation of the People Act, 1950 (XLIII of 1950)," the words "by or under the U. P. Municipalities Act, 1916," had been substituted.

(2) If the Director of Elections (Local Bodies) has reason to believe that any offence punishable under Section 129 or 134 or under clause (a) of sub-section (2) of Section 136 of the said chapter has been committed in reference to any election to a board, it shall be the duty of the Director of Elections (Local Bodies) to cause such enquiries to be made and such prosecutions to be instituted as the circumstances or the case may appear to him to require.

(3) No court shall take cognizance of any offence punishable under Section 129 or under Section 134 or under clause (a) of sub-section (2) of Section 136 unless there is a complaint made by order of or under authority from the Director of Elections (Local Bodies).

13-K. Jurisdiction of Civil Courts.—(1) No Civil Court shall have jurisdiction—

- (a) to entertain or adjudicate upon any question whether any person is or is not entitled to be registered in an electoral roll of a ward ; or
- (b) to question the legality of any action taken by or under the authority of an Electoral Registration Officer of any decision given by any authority appointed under this Act, for the revision of any such roll ; or
- (c) to question the legality of any action taken or any decision given by the Returning Officer or by any other officer appointed under this Act in connection with an election.

(2) No election shall be called in question except by an election petition presented in accordance with the provisions of this Act.]

Civil Court-Jurisdiction.—This section bars the jurisdiction of Civil Courts in certain matters. Sub-section (2) is a bar to the exercise of jurisdiction by a Civil Court in matters relating to the validity of an election and unless the provisions of clause (2) of Section 19 are to be rendered nugatory, it must follow the Election Tribunal has jurisdiction in such matters.¹

14 to 17. [Deleted by U. P. Act VII of 1953].

18. * * *

Election Petitions

19. Power to question municipal election by petition.—(1) The election of any person as a member of a board may be questioned by an election petition on the ground—

- (a) that such person committed during or in respect of the election proceedings a corrupt practice as defined in Section 28 ;

1. *Kailash Chand v. H. N. Agarwala*, 1954 A 219.

2. S. 18 *re*. provision by rule for enrolment of managers, trustees, etc. omit. by S. 13 of U. P. Act VII of 1949.

- (b) that such person was declared to be elected by reason of the improper rejection or admission of one or more votes, or for any other reason was not duly elected by a majority of lawful votes;
- ¹[(c) that such person was not qualified to be nominated as a candidate for election or that the nomination paper of the petitioner was improperly rejected.]
- (2) The election of any person as a member of a board shall not be questioned—
- (a) on the ground that the name of any person qualified to vote has been omitted from, or the name of any person not qualified to vote has been inserted in the electoral roll or rolls;
- * * *
- ³(b) on the ground of any non-compliance with this Act or any rule, or of any mistake in the forms required thereby, or of any error, irregularity or informality on the part of the officer or officers charged with carrying out this Act or any rules, unless such non-compliance, mistake, error, irregularity or informality has materially affected the result of the election.

Scope.—The election of a member cannot be challenged on grounds other than those mentioned in Section 19⁴. The Municipal Board cannot be blamed for any omission of the Election Officer or any mistake made by him in not preparing the electoral roll from the lists or registers maintained by the Municipal Office. This mistake, if any, would be an irregularity and not an illegality so as to vitiate the election unless it has materially affected the result⁵.

The election of any member can be questioned by an election petition on the grounds mentioned in sub-section (2) (b) of Section 19 provided the result of the election has been thereby materially affected⁶.

Returning Officer—Functions.—A Returning Officer's functions with regard to the scrutiny of nominations may end on a certain date, but nevertheless he remains charged with other duties under the Act, and therefore his action in setting aside, on review, his previous order, rejecting the nomination papers cannot be said to be without jurisdiction. If, however, it is made without legal justification, it can be made a subject of election petition⁷.

Improperly Rejected—Meaning.—Merely because a voter says that he would have voted for his candidate, but that his vote was wrongly recorded, it cannot be assumed that he had duly cast his vote for the candidate, and it cannot be taken as the case of a vote improperly rejected⁸.

20. Form and presentation of petition.—(1) The petition shall be presented within [thirty]⁹ days after the day [on which the result of the election questioned is announced by the Returning Officer]¹⁰ and shall specify the ground or grounds on which the election of the respondent is questioned and shall contain a summary of the circumstances alleged to justify the election being questioned on such grounds.

(2) The petition may be presented by any candidate in whose favour votes have been recorded and who claims in the petition to be

1. *Add.* by S. 14 of U. P. Act VII of 1949.

2. Original clause (b) *omit.* by S. 4 of U. P. Act IX of 1922.

3. Renumbered by S. 4 of U. P. Act IX of 1922.

4. *Nawal Kishore v. Municipal Board, Gorakhpur*, 1937 A 365=1937 A L J 336.

5. *Ibid.*

6. *Kailash Chand v. H. N. Agarwala*, 1954 A 219.

7. *Kailash Chand v. H. N. Agarwala*, 1954 A 219.

8. *Mani Ram v. Bhagwat Sarup*, 1949 A 50=1949 A L J 40.

9. *Subs.* for [fifteen] by S. 15(i) of U. P. Act VII of 1949.

10. *Subs.* for [on which the election proceedings were held] by *ibid.*

declared elected in the room of the person whose election is questioned or by ten or more electors of the municipality, [or by a person who claims that his nomination paper was improperly rejected.]¹

(3) The person whose election is questioned and, where the petition claims that any other candidate shall be declared elected in the room of such person, every unsuccessful candidate who has polled more votes than such candidate shall be made a respondent to the petition.

Petition-Presentation.—This section should not be strictly construed so as to invalidate petitions not personally presented to the Collector ².

21. Recriminatory proceedings.—Every respondent may give evidence to prove that any person in respect of whom a claim is made, that such person be declared elected in his room or in priority to him, should not be declared so elected, in the same manner as if he had presented a petition against the election of such person.

22. Tribunal.—³[(1) An election petition shall be heard by a Tribunal consisting of one or more Civil Judicial Officers appointed by the [State Government]⁴ in this behalf and at a place in the district within which the municipality is situate.]

⁵[(2) An election petition may be presented to the Tribunal or where a Tribunal has not been appointed, to the Collector of the district within which the municipality is situate :

Provided that the petition or application shall not be entertained by the Tribunal or the Collector, as the case may be, unless it is accompanied by a treasury chalan to show that the amount of the necessary security prescribed in the rules has been deposited.]

Note.—See Section 20.

Civil Court-Jurisdiction.—If a Tribunal Acts within its jurisdiction, the decision cannot be challenged in a Civil Court but if the tribunal does anything which is not warranted by law, its proceedings can be questioned in a civil court. It is for the civil court to see that the election tribunal acts within the jurisdiction allotted to it by the Legislature ⁶.

23. Procedure.—(1) Except so far as may be otherwise provided by this Act or by rule, the procedure provided in the Civil Procedure Code in regard to suits, shall, so far as it is not inconsistent with this Act or any rule and so far as it can be made applicable, be followed in the hearing of elections :

(2) Provided that—

(a) two or more persons whose election is called in question may be made respondents to the same petition, and their cases may be tried at the same time, and any two or more election petitions may be heard together ; but, so far as is consistent with such joint trial or hearing, the petition shall be deemed to be a separate petition against each respondent ;

(b) the [Election Tribunal]⁷ shall not be required to record or have recorded the evidence in full, but shall make a memorandum of the evidence sufficient in its opinion for the purpose of deciding the case ;

(c) the [Election Tribunal]¹ may, at any stage of the proceedings, require the petitioner to give * * *⁸ further security

1. Add. by S. 15 (ii) of *ibid.*

2. *Suraj Narain v. Jang Bahadur*, 45 A 687=1924 A 132.

3. Subs. by S. 16 (1) of *ibid.*

4. Subs. by the A. O. 1950 for [Provl. Govt].

5. Subs. by S. 16 (ii) of U. P. Act VII of 1949.

6. *Zahid Husian v. M. Hamiduddin*, 1952 A W R 297 (H C).

7. Subs. for [Court] by S. 17 of U. P. Act VII of 1949 whatever occurring in Sections 23 to 27.

8. The words [security or] omit. by S. 18 (i) *ibid.*

- for the payment of all costs incurred or likely to be incurred by any respondent;
- (d) the [Election Tribunal]⁵ for the purpose of deciding any issue, shall only be bound to require the production of, or to receive, so much evidence, oral or documentary, as it considers necessary;
- (e) during the hearing of the case the [Election Tribunal]¹ may refer a question of law to the High Court under Order XLVI of the First Schedule of the Code of Civil Procedure, 1908, but there shall be no appeal either on a question of law or fact, and no application in revision against or in respect of the decision of the [Election Tribunal]¹
- ¹[(f) any person considering himself aggrieved by the decision may apply for review to the Tribunal within thirty days from the date of the decision and the Tribunal may thereupon review the decision on any point :

Provided that in computing the period of limitation the provision of sub-section (2) of Section 12 of the Indian Limitation Act, 1908, shall apply.]

Candidate withdrawing-Effect.—If there are two candidates for one vacancy and during the polling, before the time came for closing the poll and the counting of votes, only one candidate is left, the Returning Officer is justified in closing the poll and declaring the sole candidate as duly elected ².

Amendment of Petition.—The Code of Civil Procedure unless it is inconsistent with the Act or any rule, and so far as it can be made applicable, applies to the entire proceedings before the Election Tribunal and therefore the Tribunal can exercise the powers of amendment conferred on a court by Order 6 Rule 17, Civil Procedure Code and can allow an election petition to be amended ³.

24. Powers of Election Tribunal.—(1) Unless it is otherwise provided by rule made in this behalf the Election Tribunal shall have the same powers and privileges as a judge of a civil court, and may, for the purpose of serving any notice of issuing any process or doing any other such thing, * * *⁴ employ, with the consent of the District Magistrate, any peon or other officer or clerk attached to the court of the District Magistrate.

(2) An order for costs, or an order for the realization of a security bond for costs, passed by the [Election Tribunal]⁵, may be sent by that [Election Tribunal]⁶ for execution to the Collector of the district within which the municipality concerned is situated, and an order so sent shall be executed by the Collector in the same manner as if it were an order passed by the Collector in proceedings under the Agra Tenancy Act, 1901,³ or the Oudh Rent Act, 1886⁶ as the case may be.

25. Finding of Election Tribunal.—(1) If the [Election Tribunal]² after making such enquiry as it deems necessary, finds in respect of any person whose election is called in question by a petition, that his election was valid, it shall dismiss the petition as against such person and may award costs at its discretion.

(2) If the [Election Tribunal]⁶ finds that the election of any person was invalid, [or that the nomination paper of the petitioner was improperly rejected,]⁷ it shall either—

1. *Suds.* by S. 18 (ii) *ibid.*

2. *Sultan Baksh v. Abdul Hamid*, 45 A 685=1924 A 134.

3. *In the matter of Amirullah v. Mr. L. P. Nigam*, 1956 A L J 189 (H C).

4. The words [be entitled to] *omit.* by

S. 4 of the U. P. Act II of 1919.

5. *See* entry 1 under S. 23.

6. *See* now the U. P. Tenancy Act, 1939 (U. P. Act XVII of 1939.)

7. *Ins.* by S. 19 of the U. P. Act VII of 1949.

- (a) declare a casual vacancy to have been created, or
- (b) declare another candidate to have been duly elected, whichever course appears, in the particular circumstances of the case, the more appropriate, and in either case may award costs at its discretion.

(3) * * * * *

Election Tribunal-Powers.—An Election Tribunal is in a sense a court of appeal in respect of the decision of the Returning Officer and as a Court of Appeal, it would normally have the same powers as the Returning Officer and in case of equality of votes coming into existence as a result or corrections made in rejecting votes admitted or admitting votes improperly rejected it can direct a lot to be drawn in the presence of the District Magistrate².

26. Avoidance of election proceedings.—(1) Notwithstanding anything contained in the preceding section if the [Election Tribunal]³ in the course of hearing an election petition is of the opinion that the evidence discloses that corrupt practices at the election proceedings in question have prevailed to such an extent as to render it advisable to set aside the whole proceedings, it shall pass a conditional order to this effect and give notice thereof to every candidate declared elected who has not already been made a party in the case calling upon him to show cause why such conditional order should not be made final.

(2) Thereupon every such candidate may appear and show cause, and may have recalled, for the purpose of putting questions to him, any witness who has appeared in the case.

(3) The [Election Tribunal]³ shall thereafter either cancel the conditional order or make it absolute, in which case it shall direct the board to make measures for holding fresh election proceedings.

Explanation.—In this clause the expressions “the election proceedings in question” and “the whole proceedings” shall mean all proceedings (inclusive of nomination and declaration of election) taken in respect of a single poll, whether the poll be for the purpose of selecting one or more persons to represent a ward or otherwise.

27. Disqualification for corrupt practice.—The [Election Tribunal]³ may declare any candidate found to have committed any corrupt practice * * *⁴ to be incapable, for any period not exceeding five years, of being elected as a member of the board or of being appointed or retained in any office or place in the gift or disposal of the board[.]⁵

[Provided that no such declaration shall be made about any candidate who was not a party to the election petition or who was not given an opportunity of being heard under Section 26.]⁶

28. Corrupt practices.—A person shall be deemed to have committed a corrupt practice who, directly or indirectly, by himself or by any other person—

- (i) induces, or attempts to induce, by fraud, intentional misrepresentation, coercion or threat of injury, any voter to give or to refrain from giving a vote in favour of any candidate;
- (ii) with a view to inducing any voter to give or to refrain from giving a vote in favour of any candidate, offers or gives any money, or valuable consideration or any place, or em-

1. *Del.* by U. P. Act VII of 1953.

2. *Mani Ram v. Bhagwat Prasad*, 1949 A 50=1949 A L J 40.

3. *See* entry 1 under S. 23

4. The words [under the preceding S.]

del. by S. 4 of the U. P. Act XVII of 1934.

5. *Subs.* for full-stop by *ibid.*

6. *Add.* by *ibid.*

- ployment, or holds out any promise of individual advantage or profit to any person;
- (iii) gives or procures the giving of a vote in the name of a voter who is not the person giving such vote;
 - (iv) abets (within the meaning of the Indian Penal Code)¹ the doing of any of the acts specified in clauses (i), (ii) and (iii);
 - (v) induces or attempts to induce a candidate or elector to believe that he, or any person in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure;
 - (vi) canvasses on grounds of caste, community, sect or religion;
 - (vii) commits such other practice as the [State Government]² may by rule prescribe to be a corrupt practice.³

Explanation.—A “promise of individual advantage or profit to a person” includes a promise for the benefit of the person himself, or of any one in whom he is interested, but does not include a promise to vote or against any particular municipal measure.

Corrupt Practice-Meaning.—“Give any place” used in the section necessarily implies the giving of the proprietary rights to the person concerned. The mere grant of a permission to the Hindu community to come and worship in a temple cannot amount to giving of a place. The mere doing of an act which may be beneficial to a person or persons does not necessarily lead to the inference that there was a design to induce voters to vote for him. Similarly, mere giving certain benefits to a community does not necessarily mean that the candidate canvassed on the ground of caste, community, sect or religion nor charitable gifts by themselves prove it ⁴.

False Personation.—Where right persons voted, and pointed out to the polling officer that they were the real persons, there was no personation ⁵

29. [*Deleted by U. P. Act VII of 1953*].

29-A. [*Deleted by U. P. Act VII of 1953*].

Control of Board

[30. Power of State Government to dissolve or supersede a board.]—If at any time the [State Government]² is, after taking into consideration the explanation of the board, satisfied that the board persists in making default in the performance of any duty [***]⁸ imposed upon⁹ it by or under this¹⁰ Act or any other enactment or is exceeding or abusing its powers, it may, by order together¹¹ with the reasons therefor published in the official Gazette, dissolve the board or supersede it for such period as may be specified :

* * *12

[Explanation.]—The period of supersession specified in the order may, if the State Government so considers expedient, be extended from time to time by notification.⁷

Scope.—This section lays down the procedure which is to be followed in passing the order of supersession and merely requires the consideration of the explanation of the Board without an opportunity to give evidence. The section does not require that the State Government should “give an opportunity to the Board to show cause” against the action proposed to be taken against it. It is also not a condition precedent to the Government proceeding under this section that it must first act under Section 35 ¹³.

1. U.C.A., Vol. I, p. 214.

2. Subs. by the A.O. 1950 for (Provl. Govt.)

3. Cls. (v) to (vii) add. by S. 20 of U.P. Act VII of 1949.

4. *Khwaja Mazhar-uddin v. Rama Shankar Amist*, 1956 A 169.

5. *Ibid.*

6. Subs. by s. 23 of U. P. Ac. VII of

1949.

7. Add. by S. 2 (b) of U.P. Act V of 1951.

8. Del. by U. P. Act 1 of 1955.

9. Subs. by U. P. Act 1 of 1955.

10. Subs. by *Ibid.*

11. *Ias.* by U. P. Act 1 of 1955.

12. Del. by U. P. Act 1 of 1955.

13. *Dr. Pyare Lal Gahlot v. State of U. P.*, 1953 A 195.

¹[**31. Consequences of supersession of board.**—When a board is superseded under Section 30, the following consequences shall follow—

- (a) all members of the board including the President shall, on a date to be specified in the order, vacate their offices as such but without prejudice to their eligibility for re-election or re-nomination ;
- (b) such person or persons as the State Government may appoint in that behalf shall, so long as the supersession of the board lasts, exercise and perform, so far as may be, the powers and duties of the board and shall be deemed to be the board for all purposes ; and
- (c) a fresh board shall be constituted with effect from the date of expiry of the period of supersession as though the term fixed under Section 10-A had expired.]

²[**31-A. Consequences of dissolution of board.**—Where a board is dissolved under Section 30, the following consequences shall follow—

- (a) All members of the board including the President shall on a date to be specified in the order, vacate their offices as such, but without prejudice to their eligibility for re-election or re-nomination.
- (b) As soon as may be thereafter, election or nomination of the members, and of the President, shall be held or made as the case may be as though a general election were due under Section 13-A.
- (c) Such person or persons as the State Government may appoint in that behalf shall so long as the board is not reconstituted exercise and perform, so far as may be, the powers and duties of the board and shall be deemed to be the board for all purposes.]³

32. Supervision by Prescribed Authority.—The [Prescribed Authority may]⁴—

- (a) inspect, or cause to be inspected [by an officer not below the rank of a sub-divisional officer]⁵ any immovable property used or occupied by a board or joint committee or any work in progress under the direction of a board or of such committee ;
- (b) any order in writing call for and inspect a book or document in the possession or under the control of a board or of such committee ;
- (c) by order in writing require a board or such committee to furnish such statements, accounts, reports or copies of documents, relating to the proceedings or duties of the board or committee, as [it]⁶ thinks fit to call for ; and
- (d) record in writing, for the consideration of a board or of such committee, any observations [it]⁶ thinks proper in regard to the proceedings or duties of the board or committee.

1. *Ins.* by U. P. Act No. VII of 1953.

2. *Subs.* by U. P. Act VII of 1953.

3. *Subs.* by U. P. Act I of 1955.

4. *Subs.* for [The Commissioner or the District Magistrate, when he is not a member of the board, may, within the

limits of his division or district, as the case may be] by S. 26 (i) of U. P. Act VII of 1949.

5. *Ins.* by S. 26 (ii) of *ibid.*

6. *Subs.* for [he] by S. 26 (iii) of *ibid.*

33. Inspection of municipal works and institutions by Government officers.—A work, or institution, constructed or maintained in whole or part at the expense of a board, and all registers, books, accounts or other documents relating thereto shall at all times be open to inspection by such officers¹ as the [State Government]² appoints in this behalf.

34. Power of the State Government or the Prescribed Authority or District Magistrate to prohibit execution or further execution of resolution or order of board.—(1) [The Prescribed Authority may,]³ by order in writing, prohibit the execution or further execution of a resolution or order passed or made under this or any other enactment by a board or a committee of a board or a joint committee or any officer or servant of a board or of a joint committee [if in its opinion]⁴ such resolution or order is of a nature to cause or tend to cause obstruction, annoyance or injury to the public or to any class or body of persons lawfully employed, * * *⁵ and may prohibit the doing or continuance by any person of any act, in pursuance of or under cover of such resolution or order.

⁶[(1-a) The District Magistrate may, within the limits of his district, by order in writing, prohibit the execution or further execution of a resolution or order passed or made under this or any other enactment by a board or a committee of a board or a joint committee or any officer or servant of a board or of a joint committee if in his opinion such resolution or order is of a nature to cause or tend to cause danger to human life, health or safety or a riot or affray, and may prohibit the doing or continuance by any person of any act in pursuance of or under cover of such resolution or order.

(1-b) The [State Government]⁷ may, of its own motion or on report or complaint received, by order prohibit the execution or further execution of a resolution or order passed or made under this or any other enactment by a board or a committee of a board or a joint committee or any officer or servant of a board or of a joint committee, if in its opinion such resolution or order is prejudicial to the public interest, and may prohibit the doing or continuance by any person of any act in pursuance of or under cover of such resolution or order.]

⁸[(2) When an order is made under sub-section (1) or (1-a) in respect of city, a copy thereof, with a statement of the reasons for making it, shall forthwith be forwarded by the Prescribed Authority or the District Magistrate through the Prescribed Authority, as the case may be, to the [State Government]⁷ which may thereupon, if it thinks fit, rescind or modify the order.]

(3) Where ⁹[the order is made by the District Magistrate under sub-section (1-a) in respect of any other municipality, a copy thereof with the statement of the reasons for making it, shall forthwith be forwar-

1. For the list of officers appointed under this s. see not. no. 2559/XI—5, d. Aug. 16, 1917.
2. Subs. by the A. O. 1950 for (Provl. Govt.) which had been subs. by the A. O. 1937 for (L. G.).
3. Subs. for [the Commissioner or the District Magistrate may, within the limits of his division or district, as the case may be] by S. 27 (1) of U. P. Act VII of 1949.
4. Subs. for [if in his opinion] by *ibid*.

5. The words [or danger to human life health or safety or a riot or affray] omit by S. 27 (1) of U. P. Act VII of 1949.
6. Add. sub-ss. (1-a) and (1-b) by S. 27 (2) of *ibid*.
7. Subs. by A. O. 1950 for [Provl. Govt.].
8. Subs. by S. 27 (3) of U. P. Act VII of 1949.
9. Subs. for [such order is made by a District Magistrate] by S. 27 (4) of U. P. Act VII of 1949.

ded by a District Magistrate to the [Prescribed Authority]¹ who may thereupon, if [it]² thinks fit, rescind or modify the order.

(4) Where the execution or further execution of a resolution or order is prohibited by an order made under [sub-section (1), (1-a) or (1-b)]³ and continuing in force, it shall be the duty of the Board, if so required by the authority making the order under the said 4[sub-sections], to take any action which it would have been entitled to take, if the resolution or order had never been made or passed, and which is necessary for preventing any person from doing or continuing to do anything under cover of the resolution or order of which the further execution is prohibited.

District Magistrate-Jurisdiction.—The District Magistrate's Jurisdiction to pass an order under this section arises only when the Board passes a resolution or makes an order. Hence an order under this Section passed at a time when the Board has neither passed any resolution nor made any order under Section 180 permitting certain constructions and alterations in a building is premature and without jurisdiction⁵.

Constructions Completed-Effect.—Constructions completed under Board's sanction, cannot be demolished by Commissioner's orders and Civil Court can intervene⁶.

35. Power of State Government and Prescribed Authority in case of default of board.—(1) If at any time, upon representation made or otherwise, it appears to the [State Government]⁷ that the Board of a city, or to the [Prescribed Authority]⁸ that the board of a municipality other than a city, has made default in performing a duty imposed on it by or under this or any other enactment⁹ [or in carrying out any order made or direction issued by the State Government in exercise of any power conferred by this Act or any other enactment] the [State Government]⁷ or the [Prescribed Authority]⁸ as the case may be, may (after calling for an explanation from the board and considering any objection by the board to action being taken under this section) by order in writing fix a period for the performance of that duty.

(2) If that duty is not performed⁹ [or the order of direction is not carried out] within the period so fixed, the [State Government]⁷ or the [Prescribed Authority]⁸ as the case may be, may appoint the District Magistrate [or any other officer not below the rank of a Deputy Collector]¹⁰ to perform it and may direct that the expense (if any) of performing the duty⁹ [or executing the order or direction] shall be paid within such time as may be fixed, to the District Magistrate by the Board.

(3) If the expense is not so paid, the District Magistrate, with the previous sanction of the [State Government]⁷ or the [Prescribed Authority]⁸ as the case may be, may make an order directing the person having the custody of the municipal fund to pay the expense from such fund.

Scope.—This section empowers the State Government to take action when the Board fails to carry out its obligations or duties. It however does not control Section 30, and it is not a condition precedent to the Government proceeding under Section 30 that it must first act under this section¹¹.

District Magistrate.—Section 35 or Section 36 does not authorise the District Magistrate to direct a President of a Municipal Board not to hold a meeting in camera and to allow the members of the public to be present at the meeting¹².

1. Subs. for [Commissioner] by S. 27 (4) (b) of *ibid.*.

2. Subs. for [he] by S. 27 (4) (c) of *ibid.*.

3. Subs. by U. P. Act No. VII of 1953.

4. Subs. by U.P. Act VII of 1953.

5. *Mahadeo Prasad and others v. The Government U. P.*, 1949 A 56=3 DLR 51. See also *ẖ. Ahmad v. Chiman Lal*, 1936 A 66.

6. *Som Nath v. Municipal Board, Agra*, 1944 A 235=1944 A L J 307.

7. Subs. by the A. O. 1950 for [Prov].

Govt.] which had been subs. by the A. O. 1937 for (L. G.).

8. Subs. for [Commissioner] by S. 60 of U. P. Act VII of 1949.

9. Ins. by U. P. Act VII of 1953.

10. Ins. by S. 28 of *ibid.*

11. *Dr. Pyare Lal Gahlot v. State of U. P.*, 1953 A 195.

12. *President Municipal Board, Shahjehanpur v. District Magistrate, Sahjehanpur*, 1956 A 369.

36. Extraordinary powers of District Magistrate in case of emergency.—(1) In case of emergency the District Magistrate may [with the permission of the Prescribed Authority]¹ provide for the execution of any work or the doing of any act which the municipal board is empowered to execute or do and of which the immediate execution or doing is, in his opinion, necessary for the safety or protection of the public and may direct that the expense of executing the work or doing the act shall be forthwith paid by the board.

(2) If the expense is not so paid the District Magistrate may make an order directing the person having the custody of the municipal fund to pay the expense from such fund.

(3) The District Magistrate shall forthwith report to the [Prescribed Authority]² every case in which he uses the powers conferred on him by this section.

Municipal members

³[37. Prohibition of remuneration to members and President.—No member or President of a municipal board shall be granted any remuneration or travelling allowance by the Board except, with the sanction of [State Government]⁴ or in accordance with rules made in this behalf].

⁵[38. Term of office of members elected or nominated to fill a casual vacancy.—The term of office of a member elected or nominated to fill a casual vacancy or a vacancy remaining unfilled at the general election shall begin upon the declaration of his election or nomination under the Act and shall be the remainder of the term of the Board.]

Membership-If Office.—In view of the provisions of the section the membership of a Board is an office and as such an application for writ of quo warranto in respect of the membership would be maintainable⁶.

38-A. * * *

[39. Resignation of members.—If a member of a board other than the President resigns by writing under his hand addressed to the [State Government]⁴ his seat shall thereupon become vacant. The resignation shall be delivered at the office of the District Magistrate of the district, in which the municipality is situate who shall forthwith inform the President and shall forward the resignation to [State Government.]⁴⁸

⁹[40. Removal of members.—(1) The [State Government]¹⁰ in the case of a city, or the Prescribed Authority in any other case, may remove a member of the Board on any of the following grounds :

(a) that he has absented himself from the meetings of the Board for more than three consecutive months or three consecutive meetings whichever is the longer period, without obtaining sanction from the Board :

Provided that the period during which the member was in jail as an undertrial, detainee or as a political prisoner, shall not be taken into account ;

(b) that he has incurred any of the disqualifications mentioned in

1. *Ins.* by S. 29 (a) of *ibid.*
2. *Subs.* for [Commissioner] by S. 29 (b) *ibid.*
3. *Subs.* by S. 30 of U.P. Act VII of 1949.
4. *Subs.* by A. O. 1950 for [Provl. Govt.]
5. *Subs.* by Act I of 1955.
6. *Maseh Ullah Shah v. Abdul Rehman Sufi*, 1953 A 193.
7. S. 38-A *re* special temporary provision for extending the term of office of

- members of the Kanpur Municipal Board was *ins.* by S. 2 of U. P. Act III of 1931 and rep. by S. 5 of U.P. Act XVII of 1934.
8. *Subs.* by S. 32 of U. P. Act VII of 1949.
9. *Subs.* by S. 33 (i) of U.P. Act VII of 1949.
10. *Subs.* by A. O. 1950 for [Provl. Govt]

[Sections 12-D and 13-D]¹

- (c) that he has within the meaning of Section 82 knowingly acquired or continued to hold, directly or indirectly, or by a partner, any share or interest in any contract by, or on behalf of, the Board ;
- (d) that he has knowingly acted as a member in a matter other than a matter referred to in Section 82 in which he or a partner, had, directly or indirectly, a personal interest or in which he was professionally interested on behalf of a client, principal or other person ; or
- (e) being a legal practitioner, acts or appears in any suit or other proceeding, on behalf of any person, against the Board or against the [State Government]² in respect of nazul land entrusted to the management of the Board, or acts, or appears for or on behalf of any other person in any criminal proceeding instituted by or on behalf of the Board ;
- (f) has abandoned his ordinary place of residence in, or has voluntarily or otherwise transferred his residence from the municipal area concerned, unless the member himself resigns his seat within three months of such abandonment or transfer].

(2) A member removed by an order of [the Prescribed Authority]³ [under clause (c), (d) or (e)]⁴ of sub-section (1) may appeal therefrom, within one month of receiving the order, to the [State Government]² and [State Government]² may, thereupon, if it thinks fit, cancel the order and reinstate the member.

(3) The [State Government]² may remove from the board a member who in its opinion has so flagrantly abused in any manner his position as a member of the board as to render his continuance as a member detrimental to the public interest :

(4) Provided that when either the [State Government]² or the [Prescribed Authority]³ as the case may be, proposes to take action under the foregoing provisions of this section, an opportunity of explanation shall be given to the member concerned, and when such action is taken, the reasons therefore shall be placed on record.

⁵(5) The State Government may place under suspension a member, against whom proceeding under sub-sections (3) and (4) has been commenced, until the conclusion of the enquiry, and any member who has been so suspended shall, not so long as the order of suspension continues to remain in force, be entitled to take part in any proceedings of the board or otherwise perform the duties of a member.]

† * * *

1. Subs. by U.P. Act VII of 1953.

2. Subs. by the A. O. 1950 for (Prov. Govt.) which had been subs. by the A. O. 1937 for (L. G.).

3. Subs. for [a commissioner] by S. 33 (ii) of U.P. Act VII of 1949.

4. Subs. for [under cl. (d), (e) or (f)] by S. 6 of U. P. Act XVII of 1934.

5. Add. by U. P. Act VII of 1953.

†In accordance with Section 2 (i) of Uttar Pradesh Municipalities (Supplementary and Validation) Act, 1951 see appendix to this Act) during the period commencing from June 21, 1949, and until a new board is constituted by the first

General Elections held under the U. P. Municipalities Act, 1916, next after the commencement of this Act, the second proviso to sub-section (4) of Section 40, sub-section (1) of section 41, and Ss. 42, 43, 44 and 44-A as printed in the appendix to this Act shall be deemed to have been in operation.

6. Proviso add. by S. 2 (2) of U. P. Act I of 1945 made by the Governor in exercise of the powers assumed by him under S. 93 of G. of I. Act, 1935 and which was re-enacted by S. 2 (1) of U. P. Act XIII of 1948 was omitted by S. 33 (iii) of U. P. Act VII of 1949.

'In its "opinion"—Effect.—See *Government of U. P. v. Radhey Lal*¹ where it has been held that the Government is the sole judge whether a member has flagrantly abused his position so as to render his continuance in the Board detrimental to public interest.

Section 40 (1)(c)-Scope.—What clause(c) of sub-section (1) of Section 40 contemplates is that the members should not have any interest in any of the contracts with the Board. Where a member only undertakes to discharge the duties of the Secretary without payment of any remuneration he gets no benefit out of the employment and acquires no share or interest in any contract. Section 82 applies merely partly and it cannot be said that by merely referring to Section 82, the whole section has been brought in Section 40 (1). However, in the order of removal the provisions of Section 40 (4) ought to be complied otherwise the order would be illegal².

Section 40 (3)-Scope.—Sub-section (3) of Section 40 gives the right to the State Govt. to remove a person who has flagrantly abused in any manner his position as a member of the Board. It does not provide any mode of inquiry, but sub-clause (4) provides that an opportunity for explanation should be given to the member, which implies that he should be permitted to examine the witnesses against him & if necessary to cross-examine them and to produce evidence in defence³. The words "has abused his position as a member" necessarily imply that a member must have acted in relation to his duties as a member so as to bring into disrepute the name of the board. If he acted in matters which have no connection with his duties, direct or remote, as a member of the board, such an action cannot be regarded as an abuse of his position as a member of the board⁴. Whenever action has to be taken the proceedings are initiated by a proposal of the State Government to take action under this sub-section. On that proposal an opportunity of explanation has to be given to the member under sub-section (4) of Section 40⁵.

Writ of Prohibition.—Under sub-section (3) of Section 40, an action can be taken if the Government is of the opinion that the member has flagrantly abused his position in the manner provided in the sub-section. The basis of taking action is the opinion of the Government and not the actual existence of the fact that the position has been flagrantly abused. When the law requires that the State Government has to form its opinion and empowers the State Government to take action on that opinion, the courts cannot examine whether the opinion formed by the Government is correct or incorrect. It is only necessary to make sure that the Government has formed the opinion as required by law⁶.

† 41. Disabilities of members removed under Section 40.—

(1) A member removed under clause (a) of sub-section (1) of the preceding section shall, if otherwise qualified, be eligible for further election [* * * *]⁷ or nomination.

(2) A member removed under clause (b) of sub-section (1) of the preceding section * * *⁸ shall not be so eligible [unless his qualification no longer exists]⁹ * * *¹⁰

(3) A member removed under sub-section (3) of the preceding section shall not be so eligible for a period of [four]¹¹ years from the date of his removal :

1. I L R 1948 A 91.

2. *Lokesh Chandra v. Commissioner, Rohilkhand Division* 1956 A 147.

3. *Mohar Singh v. President Notified Area Committee*, 1956 A L J 759.

4. *Shri Bakhtawar Lal v. State of U. P.* 1956 A L J 18.

5. *Parushattan Chandra v. State of U. P.* 1955 A 106.

6. *Ibid.*

7. *Decl.* by U. P. Act VII of 1953.

8. The words (on the ground that he is an undischarged insolvent) *ins.* by S. 7. of U. P. Act XVII of 1934 were *omit.* by S. 34 (2) of U. P. Act VII of 1949.

9. *Ins.* by s. 34 (2) of *ibid.*

10. The words (until he has obtained his discharge) *omit.* by *ibid.*

11. *Subs.* for (three) by S. 34 (3) of *ibid.*

¹[Provided that the [State Government]² may for sufficient reason exempt any person from this disability];

(4) A member removed under any other provision of the preceding section shall not be so eligible until he is declared [for reasons to be specified]³ to be no longer ineligible, and he may be so declared by an order of the [State Government]² or the [Prescribed Authority]⁴ whichever of these authorities passed the order of removal.

†**42.** [*Deleted by U. P. Act VII of 1953*]

President and Vice-President

⁵[**43. Election or nomination of President.**—(1) As soon as may be, after the election of members of a board is completed at a general election, the members shall elect a President of the Board in accordance with the system of proportional representation by means of the single transferable vote and the voting at such election shall be by secret ballot.

(2) For the purposes of the election of President, the election of the members of the Board shall, notwithstanding any seat remaining unfilled, be deemed to be completed if at least four-fifths of the total number of members fixed under Section 9 have been elected.]

⁶[**43-A. Bar on simultaneously holding the post of President or Vice-President under different local authorities.**—No person shall be at the same time the President or Vice-President both of a Municipal Board and any other local authority :

Provided that if a person is elected to any such or similar office of more than one local authority, he shall, at his option, continue to hold the office in one local authority and resign from others within a prescribed period.]

⁷[**43-AA.** (1) A person shall not be qualified to be chosen as President of a Board unless he—

(a) is an elector for any ward in the municipality concerned ; and

(b) is not less than 30 years of age on the date of his nomination as a candidate for election to the office of President under Section 43-C.

(2) A person shall be disqualified for being chosen as and for being, a President of a Board if he—

(a) is or has become subject to any of the disqualifications mentioned in clauses (a) to (j) of Section 13-D and the disqualification has not ceased or been removed under the said section ; or

(b) is a member of a District Board under U. P. District Boards Act, 1922.]

⁸[**43-B.**—(1) No election of the President shall be called in question except by an election petition presented in accordance with the provisions of this Act.

(2) An election petition may be presented by any member entitled to vote at the election or by a candidate who has been defeated at the election on one or more of the following grounds, that is to say—

(a) that the returned candidate has committed any corrupt

1. Add. by *ibid.*

2. Subs. by A. O. 1950 for (Provl. Govt).

3. Ins. by S. 34 (4) of U. P. Act VII of 1949.

4. Subs. for (Commissioner) by *ibid.*

5. Subs. by U. P. Act I of 1955.

6. S. 43-A and 43-B Ins. by S. 37 *ibid.*

7. Ins. by Act I of 1955.

8. Subs. by Act I of 1955.

practice within the meaning of Section 28 ;

- (b) that the nomination of any candidate has been wrongly rejected or the nomination of successful candidate or any other candidate who has not withdrawn his candidature has been wrongly included ;
- (c) that the result of the election has been materially affected by—
 - (i) the improper rejection or refusal of a vote, or
 - (ii) any non-compliance with the provisions of this Act or of any rules or orders made under this Act.

(3) An election petition shall be presented to such officer as the State Government may by notification in the official Gazette appoint in this behalf and different officers may be appointed in respect of petitions relating to different municipalities.

(4) If an election petition has not been presented within the time allowed therefor under Section 43-C or is not accompanied with the requisite court-fee or security the officer appointed under sub-section (3) shall reject the petition.

(5) An election petition not rejected under sub-section (4) shall be heard by a Tribunal consisting of one or more Civil Judicial Officer or Officers not below the rank of a District Judge to be appointed by the State Government in this behalf.]

¹[**43-C.** The State Government may, by order, make provision with respect to the following matters concerning the conduct of and settlement of dispute regarding election of Presidents, that is to say—

- (a) the appointment, powers and duties of Returning Officers ;
- (b) appointment of dates for nomination, scrutiny, withdrawal and polling ;
- (c) the manner of presentation and the form of nomination paper, the requirements for a valid nomination, scrutiny of nominations and withdrawal of candidature ;
- (d) procedure at elections, including death of candidate before poll and procedure of contested and uncontested elections ;
- (e) hours of polling and adjournment of poll ;
- (f) manner of voting at elections ;
- (g) scrutiny and counting of votes including recounting of votes and procedure to be followed in case of equality of votes ;
- (h) declaration and notification of results ;
- (i) return and forfeiture of security deposits ;
- (j) form of the election petition and the court-fee payable thereon and parties thereto ;
- (k) manner of presentation of the election petition and the time within which the petition shall be presented ;
- (l) deposit of security with the election petition and return and forfeiture thereof ;
- (m) relief that may be claimed by the petitioner ;
- (n) procedure to be followed in the hearing of election petition and the place of hearing ;
- (o) powers of the election tribunal ;
- (p) orders of the tribunal including declaration of a candidate other than the returned candidate to have been elected and grounds therefor ;
- (q) disqualification of candidates on the ground of committing corrupt practices ; and

(r) generally on all matters relating to conduct of and disputes regarding election of Presidents.]

44. * * *

2[44-A. Election or nomination of a President in a casual vacancy.—If a casual vacancy occurs in the office of President owing to death, resignation or removal, or due to the avoidance of his election, the members of the Board shall elect a President in the manner, as far as may be, provided in Section 43 and under Section 43-C for the election of President at a general election.]

45. Eligibility of President for re-election or re-nomination.—(1) An outgoing [President]³ if otherwise qualified shall be again eligible for election or nomination as [President]³.

(2) * * *

Sanction.—The sanction of the Government must exist at the time when the election of the chairman takes place. The election itself is prohibited without such sanction⁵.

***[46. Term of office of members.**—The term of office of a President elected in a casual vacancy shall commence from the declaration of his election under the Act and shall be the remainder of the term of the Board.]

Note.—The date upon which a chairman assumes office is to be decided on facts—Section 46 is of no help in this respect⁶.

46-A. * * *

47. Resignation of President—(1) A [President]⁹ of a Board wishing to resign may forward his written resignation through the District Magistrate—

(a) where he is the [President]⁹ of the Board of a city to the [State Government]¹⁰ and

(b) where he is the [President]⁹ of any other board, to the [Prescribed Authority]¹¹

(2) On receipt by the Board of information that the resignation has been accepted by the [State Government]¹⁰ or the [Prescribed Authority]¹¹, as the case may be, such [President]⁹ shall be deemed to have vacated his office.

¹²47-A. Resignation of President on vote of no-confidence.—

(1) If a motion of non-confidence in the President has been passed by the Board and communicated to the President in accordance with the provisions of Section 87-A, the President shall—

(a) within three days of the sending of such communication, either resign his office or represent to the State Government to dissolve the Board, stating his reasons therefor; and

(b) on the expiry of three days after the date of sending of such communication, stop acting as President and shall be

1. S. 44 omit. by S. 38 of U. P. Act VII of 1949 which had been *subs.* by S. 9 of U. P. Act V of 1932.

2. *Subs.* by Act I of 1955.

3. *Subs.* for [Chairman] by S. 61 of U. P. Act VII of 1949.

4. *Subs.* (2) omit. by S. 40 of U. P. Act VII of 1949.

5. *Hanandan Prasad v. Kamla Prasad Kanear*, 1934 A 376=56 A 330. But Mr. Justice Bennet disagreed with this view of Sulaiman C. J. and gave a separate judgment in the same case holding that subsequent sanction was sufficient.

6. *Subs.* by Act I of 1955.

7. S. 46-A re. special provision for extending the term of office of the Chairman of the Kanpur Municipal Board which was *ins.* by S. 3 of U.P. Act III of 1931 was *omit.* by S. 12 (2) of U. P. Act V of 1932.

8. *Shiva Dayal v. State of U. P.* 1953 A 664.

9. *Subs.* for [Chairman] by S. 61 of U. P. Act VII of 1949.

10. *Subs.* by A. O. 1950 for [Provincial Government] which had been *subs.* by A. O. 1937 for [L. G.]

11. *Subs.* for (Commissioner) by S. 60 of U.P Act VII of 1949.

12. *Subs.* by Act I of 1955.

deemed to be incapacitated from functioning as President within the meaning of Section 55.

(2) In the event of failure of the President to act in accordance with clause (a) of sub-section (1) within the time allowed under that sub-section the State Government shall remove him with effect from a date to be specified in the order and any person so removed shall notwithstanding anything in Section 43-AA be not eligible for re-election to fill any casual vacancy occurring before the general election next following.

(3) If a representation has been made in accordance with sub-section (1), the State Government may after considering the same either ask the President to resign or dissolve the Board including the President.

(4) If the State Government asks the President to resign under sub-section (3) he shall within three days of the receipt of the order resign the office of President.

(5) In the event of failure to resign within the time allowed in sub-section (4) the President shall be removed by the State Government and shall not be eligible for re-election at the next election of the President or to fill up any casual vacancy occurring before the next general election of the Board.

(6) If the State Government dissolves the Board under sub-section (3) the consequences mentioned in Section 31-A shall follow as if there had been a dissolution under Section 30.

Scope.—This section gives the president a choice either to resign at once when a motion of non-confidence has been passed against him or to ask the State Government to dissolve the Board. When he takes recourse to the latter alternative he has to give reasons why the Board should be dissolved. The State Government is empowered to consider those reasons and to decide whether to act upon the advice of the President by dissolving the Board or to ask the President to resign. The State Government has to act reasonably as the circumstances of the case may require. This however does not vest discriminatory or arbitrary powers in the hands of the State Government and therefore sub-section (3) is not ultra vires¹.

48. Removal of President.—[(1) * * *]²

[(2) The [State Government]³ may, at any time, if it is satisfied—

⁴[(a) that there has been a failure on the part of the President in performing his duties, give him a warning or remove him from office as the State Government think fit, or]

(b) that the President has—

(i) incurred the disqualification mentioned in ⁴[Section 12-D and 43 AA]⁵ or

(ii) within the meaning of Section 82 knowingly acquired or continued to hold, directly or indirectly, or by a partner, any share or interest in any contract by or on behalf of the Board, or

(iii) knowingly acted as a President in a matter other than a matter referred to in Section 82, in which he or a partner, had directly or indirectly, a personal interest, or in which he was professionally interested on behalf of a client, principal or other person, or

(iv) being a legal practitioner acted or appeared in any suit or other proceeding on behalf of any person against the Board or against the [State Government]³ in respect of a nazul land entrusted to the management of the Board,

1. *Abdul Wajid v. State of U. P.* 1955 A 708.

2. *Omit.* by S. 43 (i) of U.P. Act VII of 1949.

3. *Subs.* by A. O. 1950 for (Provincial Government).

4. *Subs.* by U.P. Act VII of 1953.

5. *Subs.* by Act I of 1955.

or acted or appeared for and on behalf of any other person in any criminal proceeding instituted by or on behalf of the Board, or

(v) abandoned his ordinary place of residence in the municipal area concerned, remove him from office,

¹[(vi) "been guilty of gross misconduct in the discharge of his duties] :

Provided that before giving a warning or removing him from office under this sub-section the [State Government]⁴ shall give him an opportunity of explaining the conduct on account of which it is proposed to take action against him and shall, in the event of taking such action, place on record the reasons therefor and the decision of the [State Government]⁴ thereon shall not be questioned in any court]³.

²[(3) The State Government may place under suspension a President against whom action is proposed under sub-clause (vi) of clause (b) of sub-section (2) until the proceedings are over and where a President has been so suspended he shall not for so long as the order of suspension continues be entitled—

(a) to exercise the powers or perform the duties of a President imposed upon him by or under this Act or any other enactment for the time being in force ; and

(b) to take part in any proceedings of the Board.]

²[(4) A President removed under clause (a) or sub-clause (vi) of clause (b) of sub-section (2) shall not be eligible for election as President or member for a period of 4 years from the date of his removal.]

Suspension-Powers.—The State Government has powers under sub-section (3) to place under suspension a President against whom an action is proposed to be taken under sub-section (2), until the proceedings are over. This sub-section therefore applies as soon as action is proposed to be taken. It means that the Government's power of suspension may be exercised as soon as a charge-sheet is served upon the President and he is called upon to explain his conduct. It does not provide for any opportunity to be given to the President. No principle of natural justice can entitle the President to have an opportunity of being heard before an order of suspension is passed against him⁵.

High Court-Interference.—It is open to the High Court to interfere before the final orders are passed by the State Government, if the charges, on which proceedings have been initiated, and the President is required to give an explanation, do not come within the ambit of the section, and they are not gross misconduct done in the discharge of duties⁶.

Scope.—The scheme of the section is that certain grounds are enumerated on which it is open to the State Government either to give a warning to the President or to remove him. If the State Government proposes to take this action on any of the grounds enumerated in clauses (a) and (b) of the section, it is obligatory on the part of the State Government, before passing a final order, to give an opportunity to the President of explaining the conduct or account of which it is proposed to take action against him. Up to the stage that the State Government makes up its mind to take action or proposes to take action, it is not necessary to give an opportunity to the President to explain his conduct. It is only when the State Government has made up its mind which results in the form of a proposal to take action and which is further manifested by a notice given to the President to show cause that an opportunity has to be given to him to explain his conduct. The inquiry started on the notice and terminating in the final order of removal or warning is an inquiry conducted by the State Government and can be regarded as a quasi-judicial proceeding. The proviso to Section 48 (2) only provides that an opportunity should be given to the president to explain his conduct. It does not contemplate an opportunity to the State Govern-

1. Ins. by U.P. Act VII of 1953.

2. Ins. by *ibid.*

4. Subs. by A. O. 1950 for (Provl. Govt.)

5. *Lala Ram Niwas v. State of U. P.*, 1956 A 137; *President, Municipal Board Shahjehanpur v. District Magistrate, Shahjehanpur*, 1956 A 369.

6. *President Municipal Board Shahjehanpur*

v. D.M. Shahjehanpur, 1956 A 369; *Bhagwan Das Barnwal v. State*, 1956 A 213.

3. S. 48 (2) subs. by S. 4 of U.P. Act II of 1926, by S. 4 of U.P. Act IX of 1933, and by S. 3 of U.P. Act XIII of 1942, and again by S. 43 (ii) of U.P. Act VII of 1949.

ment to act as a prosecutor and to produce further material or evidence in support of the charge. The President has also not been given any opportunity to produce oral evidence or to demand personal hearing. The State Government may, while conducting the inquiry, look into the evidence necessary to prove or disprove the charges levelled, but it cannot go beyond the charges mentioned in the notice to come to the conclusion that the petitioner committed misconduct¹.

²[**49. Provision for President always being a member of Board.**—The President of a Board, if his not already a member of the Board, shall be *ex-officio* member of the Board.]

50. Functions of Board that must be discharged by the President.—The following powers, duties and functions of a Board may be exercised, and shall be performed or discharged, by the [President]³ of the Board and not otherwise, namely—

- (a) the powers vested in the [President]³ by Section 70, [74 and the provisos to sections]⁴ 75 and 76 to appoint, punish or dismiss servants of the Board;
- (b) the determination, in accordance with any regulation in this behalf, of questions arising in respect of the service, [transfer]⁵, leave, pay, privileges and allowances of servants of the Board ;
- [(bb) general supervision over all officers and works of the Board;]⁶
- (c) the submission to [the Prescribed Authority]⁷ under Section 32, of statements, accounts, reports or copies of documents, and under sub-sections (4) and (5) of Section 94 and sub-section (1) of Section 108 of copies of resolutions passed by the Board or by a committee of the Board;
- (d) such of the powers, duties and functions referred to in the third column of Schedule I as are delegated by the Board under Section 112 to the [President]³; and
- (e) all other duties, powers and functions of a Board with the exception of—
 - (i) where there is an executive officer, those vested in an executive officer, by Section 60 [and where there is a medical officer of health, those vested in the medical officer of health by Section 60-A]⁸
 - (ii) those specified in the second column of Schedule I, and
 - (iii) those delegated by the Board under Section 112.

51. Additional duties of the President.—It shall also be the duty [and power]⁹ of the [President]¹⁰—

- ¹¹[(a) unless [provided otherwise by this Act or]¹² prevented by reasonable cause,
- (i) to convene and preside at all meetings of the Board,
- (ii) * * *¹³

1. *President, Municipal Board Shahjehanpur v. District Magistrate*, 1956 A 369.
 2. *Subs.* by Act I of 1955.
 3. *Subs.* for [chairman] by S. 61 of U. P. Act VII of 1949.
 4. *Ins.* by S. 8 of U. P. Act XVII of 1934.
 5. *Ins.* by S. 44(1) of U. P. Act VII of 1949.
 6. *Cl. (bb) add.* by S. 44 (2) of *ibid*
 7. *Subs.* for (the Commissioner and the District Magistrate) by S. 44(3) of

ibid.
 8. *Add.* by S. 13 of U. P. Act V of 1932.
 9. *Ins.* by S. 45 (1) of U. P. Act VII of 1949.
 10. *Subs.* for [chairman] by S. 61 of *ibid*.
 11. *Subs.* by S. 6 of U. P. Act IX of 1933.
 12. *Ins.* by S. 4 (a) of U. P. Act XIII of 1942 which was re-enacted by S. 2(1) of U. P. Act XIII of 1948.
 13. *Omit* by S. 4 (b) of *ibid*.

- (iii) otherwise to control in accordance with any regulation made in this behalf the transaction of business at all meetings of the Board ;]
- (b) to watch over the financial and superintend the executive administration of the board and bring to the notice of the Board any defect therein ; and
- (c) to perform such other duties as are required of, or imposed on him by or under this [or any other]¹ Act.

²[**51-A. Authority to President to address State Government on question of general public interest.**—A President may address the [State Government]³ on any Department of the [State Government]³ on any question of general public interest in the manner prescribed.]

52. Power of Board to require reports, etc. from President.—(1) The Board may require the [President]⁴ to furnish it with—

- (a) any return, statement, estimate, statistics or other information regarding any matter appertaining to the administration of the municipality ;
- (b) a report or explanation on any such matter ; and
- (c) a copy of any record, correspondence or plan or other document which is in his possession or control as [President]⁴ or which is recorded or filed in his office or in the office of any municipal servant.

(2) The [President]⁴ shall comply with every requisition made under sub-section (1) without unreasonable delay.

⁵[(3) Nothing in this section or in any other provision of this Act shall be deemed to prevent the Board from making regulations⁶ authorizing the asking of questions by members at its meetings, subject to such conditions and restrictions as may be prescribed in the regulations.]

53. Delegation by President of his powers and duties to a Vice-President.—(1) A [President]⁴ may empower, by general or special order, any [Vice-President]⁴ to exercise under his control any one or more of his powers, duties or functions except those specified in clauses (a) and (b) of Section 51.

(2) An order by the [President]⁴ under sub-section (1) may prescribe any condition, and impose any restrictions, in respect of the exercise of any power, the performance of any duty or the discharge of of any function.

(3) In particular, such order may prescribe the condition that any order by a [Vice-President]⁴ in the exercise of a power conferred on him by sub-section (1) shall be liable to rescission or revision by the [President]⁴ upon appeal to the [President]⁴ within a specified time.

⁷[**53-A. Delegation by President of powers under clause (a) of Section 50.**—(1) A [President]⁴ may empower by general or special order any servant of the Board to exercise under his control any one or more of the powers specified in clause (a) of Section 50.

1. *Ins.* by S. 45 (2) of U. P. Act VII of 1949.

2. *Add.* by S. 46 of *ibid.*

3. *Subs.* by A. O. 1950 for (Provincial Government).

4. *Subs.* for [chairman] or [vice-chairman] by S. 61 of U. P. Act VII of

1949.

5. *Ins.* by S. 2 of U. P. Act VI of 1919.

6. *For* model regulations, see p. 632, M. M., 1952 edition.

7. 53-A *ins.* by S. 9 of U. P. Act II of 1919.

(2) An order of the [President]¹ under sub-section (1) may prescribe any condition, and impose any restriction, in respect of the exercise of any power.

(3) Any order passed by a servant of the Board in the exercise of a power conferred on him under sub-section (1) shall be liable to rescission or revision by the [President]¹.

54. Election, term of office and resignation of Vice-President.—(1) Every Board shall have a [Vice-President]¹, or a senior and a junior †[Vice-President]¹ elected, as occasion arises, by the Board from among its members by special resolution.

(2) The term of office of a [Vice-President]¹ of any description shall be one year from the date of his election or the residue of his term of office as a member of the Board, whichever is less.

(3) Any [Vice-President]¹ wishing to resign may intimate in writing his intention to do so to the [President]¹ and on his resignation being accepted by the Board, he shall be deemed to have vacated his office.

1[54-A. (1) Where a person on being elected President fails or refuses to function or is otherwise not able to function, and a Vice-President has not been elected in accordance with this Act, the powers and functions of the President except presiding at a meeting of the Board shall, until a Vice-President has been elected, be exercised and performed if the District Magistrate so directs and subject to such conditions as he may specify, by the Executive Officer and in the case of a Board where there is no Executive Officer, by the Secretary, and the following procedure shall be followed for the election of a vice-president.

(2) The meeting for the election of the vice-president shall be held at the office of the board and on the date and time appointed by the District Magistrate. The notice of the meeting and date and time appointed therefor shall be sent to every member of the board at his place of residence seven clear days before the date fixed for the meeting. A copy of such notice shall also be published in such manner as the District Magistrate may direct and thereupon every member shall be deemed to have received the notice.

(3) The District Magistrate shall arrange with the District Judge for a Stipendiary Civil Judicial Officer to preside at the meeting convened under this section and no other person shall preside over it. If within half an hour of the time appointed for the meeting, the Judicial Officer is not present to preside at the meeting, the meeting shall stand adjourned to the date and the time to be appointed and notified later to the members by that officer under sub-section (4).

(4) If the Judicial Officer is unable to preside at the meeting, he may after recording his reasons adjourn the meeting to such other date and time as he may appoint but not later than seven days from the date appointed for the meeting under sub-section (2). He shall without delay communicate in writing to the District Magistrate the adjournment of the meeting. It shall not be necessary to send notice of the date and the time of the adjourned meeting to members individually but the District Magistrate shall give notice of the date and the time of the adjourned meeting by publication in the manner provided in sub-section (2).

(5) Save as provided under sub-sections (3) and (4) the meeting convened under this section shall not be adjourned for any reason.

1. Subs. for [chairman] or [vice-chairman] or [vice-chairmen] by S. 61 of

U. P. Act VII of 1949.
2. Add. by U. P. Act I of 1955.

(6) As soon as the meeting convened under this section has commenced the board shall proceed to elect the Vice-President.

(7) The Judicial Officer shall not be entitled to vote at the election.

(8) In case of equality of votes, the Judicial Officer shall decide by lot which of the candidates having equal votes is to be declared elected.

(9) The Judicial Officer shall declare the result of the election at the meeting and shall forward a copy of the minutes of the meeting to the President and the District Magistrate.]

55. Duties of Vice-President.—(1) A ¹[Vice-President]

(a) shall, in the absence of the [President]¹ from a meeting of the Board and unless prevented by reasonable cause, preside, regulate the conduct of business, and maintain and enforce order, at the meeting, and when so presiding may exercise the powers specified in Section 91 ;

(b) shall during a vacancy in the office of [President]¹ or the incapacity or temporary absence of the [President]¹ perform any other duty and, when occasion arises, exercise any other power of the [President]¹;

(c) shall at any time perform any duty and exercise, when occasion arises, any power delegated to him by the [President]¹ under Section 53.

(2) Where there are two [Vice-Presidents]¹ the duties and powers specified in clauses (a) and (b) of sub-section (1) shall be performed or may be exercised by the senior [Vice-President]¹ and in his absence by the junior [Vice-President]¹ and the duties and powers specified in clause (c) by whichever [Vice-President]¹ is named in the order of delegation.

²[**56. Notifications of elections, nominations and vacancies.**—Every election and nomination of a member or President of a Board, the constitution of the board, and every vacancy in the office of member or President, shall be notified in the official *Gazette*.

Scope.—The date upon which a Chairman (President) assumes office is to be decided on facts. It is not dependent upon the issue of a notification, as there is no provision in the Act, which lays down that a notification is required.³

The Executive Officer and Medical Officer of Health

[57. Power of Board to appoint and employ Executive Officer and Medical Officer of Health.—(1) Every Board shall, unless the [State Government]⁵ either on its own motion or on representation made by the Board, otherwise directs, appoint an Executive Officer by a special resolution.]:

Provided that in every case in which such Board has at the time of the passing of the Act a Secretary but no Executive Officer the Secretary shall be deemed to be the Executive Officer until or unless he is duly replaced.

(2) Every Board with an income of Rs. 50,000 per annum or over shall, unless the [State Government]⁵ otherwise directs, employ a Medical Officer of health who belongs to the Uttar Pradesh Public Health

1. Subs. for [chairman] or [vice-chairman] or [vice-chairman] by S. 61 of U. P. Act VII of 1949.

2. Subs. by Act 1 of 1955.

3. *Shiv Dayal v. State of U. P.*, 1953 A 664.

4. S. 57 was subs. by S. 14 of U. P. Act

V of 1932 and sub-s. (1) of this S. 50 subs. was later subs. by S. 47 of U. P. Act VII of 1949.

5. Subs. by A. O. 1950 for [Provl. Govt].
6. Subs. by the A. O. 1950 for [Provl. Govt.] which had been subs. by the A. O. 1937 for [L. G.]

Service¹ [and an accountant who belongs to the State Accounts Service, on such terms and conditions as may be prescribed by the [State Government]²]³.

[⁴(2-A) Every Board shall, If so required by the State Government, employ in addition to or in place of the Accountant, an Accounts Officer nominated by the State Government either severally or jointly with one or more than one Board or any other local authority on the terms and conditions as may be prescribed by the State Government from time to time.]

(3) The appointment, salaries and conditions of service of Executive Officers and Medical Officers of Health shall be subject to the approval of the [State Government]²]³.

58. Punishment, dismissal or removal of Executive Officer and transfer of Medical Officer of Health.—(1) A Board may punish, dismiss or remove its Executive Officer by a special resolution supported by not less than two-thirds of the members constituting the Board, subject to his right of appeal to the [State Government]³ within thirty days of the communication to him of the order of punishment or dismissal.

(2) The [State Government]³ may suspend the Executive Officer pending the decision of an appeal under sub-section (1), and may allow, disallow or vary the order of the Board.

(3) If a Board by special resolution recommend the transfer of its Medical Officer of Health [or its Accountant]⁶ the [State Government]³ shall transfer the Medical Officer of Health [or the Accountant as the case may be]⁶ from the Board's employment provided the Board gives sufficient reasons therefor.]

Administrator—if Board.—Section 3 of the U. P. Local Bodies (Appointment of Administrators) Act expressly provides that the Administrator will be deemed in law to be the Board and consequently for the exercise of the powers which vested in the Board, the Administrator will be deemed to be the Board.⁷

Board—Powers of dismissal.—A statutory body has to act in accordance with the terms of the statute. In matters of appointment and dismissal or termination of services, it has to act in accordance with the provisions of the statute and unless there is a provision in the statute which directly or indirectly empowers the Board to terminate the services of its employee, it is not open to the Board to discharge an employee at its pleasure. Rule 6 of the Municipal Manual does not give any power to an Administrator to discharge an Executive Officer from service. The power of discharge cannot be exercised unless the provisions of Rule 44 of the Municipal Manual have been complied with.⁸

59. Appointment of officiating Executive Officer.—⁹ (1) During the absence on leave, or other temporary vacancy in the office of an Executive Officer, if the period does not exceed two months, the [President]¹⁰, may appoint a person to act as Executive Officer, if the period

1. For rules re-appointment of Medical Officers of Health see not. no. 4233/XI—753-E, d. Nov. 21, 1932 and no. 2865/XI—353-46, d. June 19, 1946, and pp. 404—408 of the Municipal Manual, 1952 edition.

2. Subs. by A. O. 1950 for [Provl. Govt].

3. Add. by S. 3 of U. P. Act I of 1945, made by the Governor, in exercise of the powers assumed by him under S. 93 of G. of I. Act, 1935 and which was re-enacted by S. 2 (1) of U. P. Act XIII of 1948.

4. Add. by U. P. Act VII of 1953.

5. S. 58 was subs. by S. 15 of U. P. Act

V of 1932.

6. Ins. by S. 4 of U. P. Act I of 1945, made by the Governor, in exercise of the powers assumed by him under s. 93 of G. of I. Act, 1935 and which was re-enacted by S. 2 (1) of U. P. Act XIII of 1948.

7. *S. D. Mathur v. Municipal Board, Agra*, 1956 A 181.

8. *S. D. Mathur v. Municipal Board, Agra*, 1956 A 181.

9. Subs. by S. 16 of U. P. Act V of 1932.

10. Subs. by S. 61 of U. P. Act VII of 1949 for [Chairman].

exceeds two months an appointment shall be made by the Board in accordance with the provisions of Section 57 (1).]

(2) Every person so appointed may exercise the powers and shall perform the duties conferred or imposed by or under this or any other enactment on the person for whom he is appointed to act.

¹[(3) All appointments made under sub-section (1) and the salaries and conditions of service appertaining to such appointments shall be subject to the approval of the [State Government]² if the term of appointment exceeds two months, and the provisions of Section 58 [with such modification as may be prescribed]³ shall apply to person so appointed.]

60. Functions of a Board that must be discharged by the Executive Officer.—(1) In any municipality where there is an Executive Officer appointed under Section 57 or 65, the following powers of the Board shall be exercised by such officer, and not otherwise, namely—

- (a) the power to grant and issue under his signature or to refuse any licence which can be granted by a Board, other than a licence for a market, slaughter-house or hackney carriage;
- (b) the power to suspend or withdraw any such licence;
- (c) the power to receive, recover and credit to the municipal fund any sum due or tendered to the Board;
- (d) the powers conferred by the section or sub-sections specified in the first column of Schedule II [or where such sections or sub-sections are followed by the words "in part" by such parts thereof as are indicated by the description in column 2 of the said schedule]⁴ and the power to do all things necessary for the exercise of these powers;
- (e) in respect of servants of the Board, the powers vested in the Executive Officer by Sections 75 and 76, and the power to grant leave of absence to the holder of any post to which he has power to appoint.
- (f) any other power that has been delegated by the Board to the Executive Officer.

⁵[(2)] Save as provided in Section 73 all servants of the Board shall be subordinate to the Executive Officer.

Executive Officer—Order.—Section 321 of the U. P. Municipalities Act does not apply to an order made by an Executive Officer as that section attaches finality only to an order passed by a board in the exercise of its powers under any of the sections mentioned in Section 318 and appealable under that section. Where, therefore, the Executive Officer of a municipality in exercise of the authority given to him under Section 60 (1) (d) issues a notice under Section 211 to a certain person to demolish a stair-case appurtenant to his house, a suit by such person against the municipality for a permanent mandatory injunction prohibiting the municipality from demolishing the stair-case is not barred by Section 321.⁶

[60-A. Function to be discharged by Medical Officer of Health.—Notwithstanding anything contained in Section 60 the [State Government]⁸ may, by notification in the [official Gazette]⁹ direct that in any municipality the Medical Officer of Health, [subject to the general

1. Subs. by S. 16 of U.P. Act V of 1932.

2. Subs. by A. O. 1950 for [Provl. Govt.] which had been subs. by the A. O. 1937 for [L. G.].

3. Ins. by S. 49 of U. P. Act VII of 1949.

4. Ins. by S. 10 of U. P. Act II of 1919.

5. Subs. for "(3)" by S. 10 of U. P. Act II of 1919.

6. *Dr. Brij Behari Lal v. Emperor*, 1943 A 123; *Mohd. Ishaq v. Administrator Municipality of Lucknow*, 1952 A 849.

7. S. 60-A ins. by S. 17 of U. P. Act V of 1932.

8. Subs. by the A. O. 1950 for [Provl. Govt.] which had been subs. by the A. O. 1937 for [L. G.].

9. Subs. for [Gazette] by A. O. 1937.

control]¹ of the Executive Officer; shall exercise the following powers: provided that in case of disagreement between these officers the question shall be referred to the [President]² whose decision shall be final—

- (a) the power to grant and issue under his signature every permit or licence, other than a permit or licence for a market or slaughter-house, which can be granted by a Board in respect of bye-laws framed under parts B, D, F, G and I of list I and part I of list II of Section 298;
- (b) the power to suspend or withdraw any such permit or licence;
- (c) the powers conferred on the Executive Officer under Section 60(1) (d) in respect of Section 191 (1) and (2), 192(1), 196(c) and (d), 201(1), 202(1), 225(1) and (2), 227, 244(1) and (2), 245(1), 249, 250(2), 267, 268, 269, 270, 271, 273(1)(a), 276, 277, 278, 280, 283, 294 and also in respect of 307 so far as the notice referred to therein relates to the other section specified in this clause;
- (d) in respect of servants of the Boards employed for conservancy, public health, vaccination, and the registration of births and deaths the powers vested in the Executive Officer by Sections 75 (a) and 76(a) and the power to grant leave of absence to the holder of any post to which he has power to appoint.]

1[60-B. Delegation of powers to principal officers of the Electrical, Public Works, Education and Water Works Departments.—[The State Government]⁴ may by notification in the official Gazette, direct that in any municipality the principal officers of the Electrical, Public Works, [* * * *]⁵ and Water Works Departments shall exercise, with reference to their departments, powers under clause (e) of sub-section (1) of Section 60, and anything done in exercise of the powers conferred under the provisions of this section shall be deemed to be thing done and power exercised by the Executive Officer].

61. Right of appeal from orders of Executive Officer.—(1) No appeal shall lie to the board from any order passed by an executive officer or Medical Officer of Health]⁶ in the exercise of the powers conferred upon him by Section 60 [or Section 60-A]⁶, unless—

- (a) the order is an order against which an entry is shown in the third column of Schedule II, such entry not being avoided by regulation made under clause (e) of sub-section (1) of Section 297 and in force, or
 - (b) the order is an order passed in respect of a licence and provision is made for appeal therefrom by any bylaw.
- (2) Where an appeal lies it shall be filed within ten days of the communication of the order or of date on which the order is, under the provisions of this Act, deemed to have been communicated.

(3) When an appeal is filed within such period the order shall remain suspended until the appeal is decided.

Appellate Powers.—The Board when hearing an appeal, has the power to take every such step as may be necessary for the satisfactory disposal of the appeal.⁷

1. Subs. for (with the concurrence in writing) by S. 50 of U. P. Act VII of 1949.
 2. Subs. by S. 61 of U. P. Act VII of 1949 for [Chairman].
 3. Ins. by S. 51 of U. P. Act VII of 1949.

4. Subs. by A. O. 1950 for [Provl. Govt.].
 5. Deleted by U. P. Act VII of 1953.
 6. Ins. by S. 18 of U. P. Act V of 1932.
 7. *Dr. Brij Behari Lal v. Emperor*, 1943 A 123=1943 A L J 103 (F B).

62. Delegation of powers by Executive Officer or Medical Officer of Health.—(1) With the sanction of the [President]¹, an Executive Officer [or Medical Officer of Health]² may empower, by general or special order, any servant of the board to exercise, under his control, any power conferred on him by or under this Act.

(2) An order by the Executive Officer [or Medical Officer of Health]² under sub-section (1) may prescribe any condition and impose any restriction in respect of the exercise of any power.

(3) Any order passed by a servant of the board in the exercise of a power conferred on him under sub-section (1) shall be liable to rescission or revision by the Executive Officer [or Medical Officer of Health]³.

63. Power of President or board or committee to require reports, etc. from Executive Officer or Medical Officer of Health.—(1) The [President or the]⁴ board, or any committee of the board, may require from the Executive Officer [or Medical Officer of Health]⁵—

(a) any return, statement, estimate, statistics or other information regarding any matter appertaining to [that branch of the administration of the municipality with which he is concerned]⁶;

(b) a report or explanation on any such matter; and

(c) a copy of any record, correspondence or plan or other document which is in his possession or under his control as Executive Officer [or Medical Officer of Health]³ or which is recorded or filed in his office or in the office of any servant subordinate to him.

(2) The Executive Officer [or Medical Officer of Health]³ shall comply with every requisition made under sub-section (1) without unreasonable delay.

64. Right of Executive Officer or Medical Officer of Health to take part in discussions.—The Executive Officer, [Accounts Officer]⁶ [or Medical Officer of Health]³ may, with the permission of the [President]⁷ or in virtue of a resolution passed in this behalf at a meeting of the board or of a committee, make an explanation in regard to a subject under discussion, but shall not vote upon or make a proposition at such meeting.

65. Power of State Government to appoint Executive Officer.—If a board, being bound to make an appointment under the provisions of Section 57 or Section 59, fails to make an appointment and to obtain the approval of the [State Government]⁸ to such appointment within such time as the [State Government]⁸ considers reasonable, the [State Government]⁸ may itself make the appointment and may fix the salary, contributions to provident fund or pension and other conditions appertaining to such appointment: provided that if the [State Government]⁸ has made an appointment in exercise of the powers conferred by this section, the board shall not be bound to pay a sum

1. Subs. for [Chairman] by S. 61 of U. P. Act VII of 1949.

2. Ins. by S. 19 of U. P. Act V of 1932.

3. Ins. by S. 19 of U. P. Act V of 1932.

4. Ins. by S. 52 of U. P. Act VII of 1949.

5. Subs. for (the administration of the municipality) by S. 19 of U. P. Act V of 1932.

6. Ins. by U. P. Act VII of 1953.

7. Subs. for (Chairman) by S. 61 of U. P. Act VII of 1949.

8. Subs. by S. 20 of U. P. Act V of 1932.

9. Subs. by A. O. 1950 for (Provincial Government) which had been subs. by A. O. 1937 for (L. G.).

exceeding a monthly average of Rs. 1,000 in the case of municipalities with an income of three lakhs or over or of Rs. 500 in the case of other municipalities on account of the salary, leave allowances, and contributions of the person so appointed].

Other servants

66. Appointment of Secretaries.—(1) Every board of a municipality where there is no Executive Officer shall, by special resolution, appoint one or more Secretaries.

(2) Each such appointment and the salary and other conditions attached thereto shall be subject to the approval of the [Prescribed Authority]¹.

67. Punishment and dismissal of Secretaries.—(1) A board may, by special resolution, punish or dismiss any secretary appointed under the preceding section subject to the conditions prescribed in Section 58 in respect of the punishment and dismissal of an Executive Officer :

(2) Provided that the power to entertain an appeal against a resolution passed under sub-section (1) or to suspend a Secretary pending the decision of such appeal shall vest in the [Prescribed Authority]¹ and not in the [State Government]².

³[**68. Appointment of special officers of Technical departments.**—(1) A board may, by special resolution and if so required by the State Government, shall, appoint the principal officers of its technical departments such as Civil Engineer, Assistant Civil Engineer, Electrical Engineer, Assistant Electrical Engineer, Water Works Engineer, Assistant Water Works Engineer, Electrical and Water Works Engineer, Assistant Electrical and Water Works Engineer, qualified Overseer or Sub-Overseer and also Secretary and Superintendent or Lady Superintendent of Education.]

(2) Each such appointment and the salary and other conditions attached thereto shall be subject to the approval of the [State Government]².

⁴[**68-A. Compliance by board of requisition by State Government for servants in times of emergency.**—On the occurrence of war, famine, scarcity, epidemic, disease of men, or beasts, floods or any similar emergency, and to provide for fairs, melas or other occasions involving large gathering of people, the board shall immediately comply with any requisition made by the [State Government]⁴ or by an officer of the Government authorized by general or special order to make the requisition, for the services of any of the board's officers or officials holding posts in its medical, public health, sanitary, vaccination, veterinary, [electrical, Water Works]⁶ or public works departments, or for the services of any *vaid* or *hakim* employed by the board, and shall meet such proportion of the charge connected with the requisitioning as the [State Government]⁷ may decide to be a proper charge on the board].

1. *Subs.* for (Commissioner) by S. 60 of U. P. Act VII of 1949.

2. *Subs.* by A. O. 1950 for (Provl. Govt.) which had been *subs.* by A. O. 1937 for (L. G.).

3. *Subs.* by U. P. Act VII of 1953.

4. *Subs.* by A. O. 1950 for (Provl. Govt.).

5. *Add.* by S. 5 of U. P. Act I of 1945

made by the Governor in exercise of the powers assumed by him under S. 93 of G./I. Act, 1935 and re-enacted by S. 2 (1) and Sch. of U. P. Act XIII of 1948.

6. *Ins.* by S. 54 of U. P. Act VII of 1949.

7. *Subs.* by A. O. 1950 for (Provl. Govt.).

69. Punishment and dismissal of officers appointed under Section 68.—⁵[(1)] A board may, by special resolution, punish or dismiss any officer appointed under Section 68 subject to the conditions prescribed in Section 58 in respect of the punishment or dismissal of an Executive officer. * * *

¹[(2)] The State Government may suspend any officer appointed under sub-section (1) of Section 68 pending decision of an appeal and may alter, amend or vary the order of the board.]

[69-A. Framing of charges against or suspension of officers by President.]—(1) If the President has reasons to believe that the Executive Officer or the Secretary or any of the other officers of the Board appointed under Section 68, is corrupt or has persistently failed in the discharge of his duties or is otherwise guilty of misconduct, he may frame charges against him and where he is satisfied that it is so necessary, he may, for reasons to be recorded, suspend him pending the completion of the enquiry.

(2) Whenever the President takes action under sub-section (1) he shall inform the [State Government]² and also forward to it a copy of the charges framed.

(3) The enquiry under sub-section (1) shall be carried on in such manner as may be prescribed by rules.

(4) After the inquiry is completed, the President shall submit the record with his own recommendation to the [State Government]² or to the Board as he may consider fit. The [State Government]² or the Board, as the case may be, shall thereupon, notwithstanding anything contained in sub-section (1) of Section 58, or 67 or 69, proceed to consider the report and may, after such further inquiry as it may deem necessary, punish, dismiss, remove or exonerate the Executive Officer or the Secretary or such other officer to whom Section 69 applies, as the case may be.

(5) Whenever the Board acts under sub-section (4) the condition prescribed in Section 58 shall apply and an appeal shall lie to the [State Government]² in the manner and to the extent provided in the said section³.

70. Temporary servants required for emergency.—The power to appoint and fix the salaries of temporary servants in cases of emergency shall vest in the [President]⁴ subject to the following conditions, namely—

(a) the [President]⁴ in the exercise of such power shall not act in contravention of an order of the board prohibiting the employment of temporary servants for any particular work, and

(b) each appointment under this section by the [President]⁴ shall be reported at the next meeting of the board following the appointment.

1. Proviso *add.* by S. 3 of U. P. Act VIII of 1945 made by the Governor in exercise of the powers assumed by him under S. 93 of G. of I. Act, 1935 lapsed with the Act on March 31, 1948.

2. *Subs.* by A.O. 1950 for (Provl. Govt.)

3. *Add.* by S. 48 of U. P. Act VII of

1949.

4. *Subs.* for (Chairman) by S. 61 of U. P. Act VII of 1949.

5. The original Sec. 69 was renumbered as sub-Section (1) and a new sub-section (2) inserted by U. P. Act VII of 1953.

Dismissal of Servants.—Unless there has been some breach of a statutory obligation on the part of the Board, servants of the Board have no cause of action for wrongful dismissal¹.

²[**71. Power of board to determine permanent staff.**—Except as provided by Sections 57, 66 68 and 70, [and subject to any general or special directions as the [State Government]³ may from time to time issue]⁴ a board may, by resolution, determine what servants are required for the discharge of the duties of the board and the salaries to be paid to them respectively.]

Discharge of Servants.—Apart altogether from this section, which by implication, empowers the Municipal Board to discharge servants whose services were no longer required, the Board, like any other employer of labour, is entitled to discharge servants if it no longer desires to employ⁵.

72. Combination of offices.—Subject to the provisions of this Act or of any rule a board may appoint one person to discharge the duties of any two or more offices.

⁶[**73. Appointment, etc. of servants on the educational establishment.**—(1) Subject to the provisions of sub-section (2), the appointment of persons on the educational establishment of a board shall be made by the Chairman, Education Committee, or such other authority as may be specified in this behalf by the State Government, and different authorities may be specified for different classes of post on the establishment.

(2) The State Government may make rules regulating the recruitment, punishment, dismissal, appeal and other conditions of service of persons appointed to the educational establishment of a board.]

⁷[**74. Appointment and dismissal of permanent superior staff.**—Subject to any provisions to the contrary contained in Sections 57 to 73 servants on [or drawing]⁸ a monthly salary exceeding Rs. [50]⁹ or in a city Rs. 75, shall be appointed and may be punished or dismissed by the [President]¹⁰ :

¹¹[Provided that an appeal shall lie—

(a) in the case of dismissal or removal to the State Government; and
(b) in the case of any other punishment, to the Prescribed Authority; and shall be presented to the State Government or the Prescribed Authority, as the case may be, within one month from the date on which the order appealed against is communicated to the person concerned.]

Provided that an appointment on a monthly salary of Rs. 250 or over in the case of cities and of Rs. 100 or over in other cases shall be subject to confirmation by the board.]

Dismissal—Remedy.—The Municipal servants stand on the same footing as other public and government servants. The conditions of service are regulated by the rules which are framed to regulate the procedure of appointment and dismissal. Provisions for appeals are also made in the rules to get redress in cases where dismissals are made in contravention of the prescribed rules of procedure. The remedy of the person aggrieved in case of non-compliance of the rules does not lie by a suit in Court, but is by way of appeal of official kind prescribed in the rules¹². It is only

1. *Ram Dulare v. Municipal Board, Jhansi*, 1946 O W N 98 (H.C.).
2. *Subs.* by S. 22 of U. P. Act V of 1932.
3. *Subs.* by the A. O. 1950 for (Provl. Govt.) which had been *subs.* by the A. O. 1937 for (L. G.).
4. *Add.* by S. 55 of U. P. Act VII of 1949.
5. *Municipal Board, Shahjehanpur v. Sardar Sukha Singh*, 1937 A 264= 1937 A L J 153= I L R 1937 A 434.

6. S. 74 was *subs.* by S. 23 of U. P. Act V of 1932.
7. *Subs.* by U. P. Act VII of 1953.
8. *Ins.* by U. P. Act VII of 1953.
9. *Subs.* for (30) and (15) respectively by S. 57 of U. P. Act VII of 1949.
10. *Subs.* for (Chairman) by S. 61 of U. P. Act VII of 1949.
11. *Inserted* by U. P. Act VII of 1953.
12. *Shankar Lal Dahania v. Balishen*, 1938 A 57= 1937 A L J 1227.

the Municipal Board that has authority to abolish a post. But it cannot delegate its powers to anybody else. It has no power or authority to dismiss a servant. That can be done only by the Chairman.

[75. Appointment of permanent inferior staff.—Except as otherwise provided the Executive Officer shall appoint—

(a) servants on a drawing monthly salary not exceeding Rs. [40]² or in a city Rs. [50]¹; and

(b) with the sanction of the [President]³ servants on a monthly salary exceeding Rs. [40]² but not exceeding Rs. [50]² or in a city exceeding Rs. [50]² but not exceeding Rs. 75¹ :

Provided that in case there is no Executive Officer the said appointments shall be made by the [President]³.

[76. Punishment and dismissal of permanent inferior staff.—Except as otherwise provided the Executive Officer may punish or dismiss—

(a) servants [on or drawing]⁴ a monthly salary not exceeding Rs. [40]² or in a city Rs. [50]² and

(b) servants [on or drawing]⁷ a monthly salary exceeding Rs. [40]² but not exceeding Rs. [50]² or in a city exceeding Rs. [50]² but not exceeding Rs. 75¹ ; but [* * *]⁸ each order of dismissal or order imposing a fine exceeding in amount one month's pay of the person fined, or order of suspension for a period exceeding one month, or order of reduction by way of punishment, [in respect of servants mentioned in clauses (a) and (b) above]⁹ shall be appealable to the [President]³.

Provided that in case there is no Executive Officer the powers conferred by this section may be exercised by the [President]².

Dismissal—Damages.—The power of dismissal in the case of a person appointed by the Board and falling under Section 76 (a) is exercisable by the Executive Officer without any qualification whatever and no suit for damages for wrongful dismissal will lie. Such a right might arise in case there was a special contract or in case there was an express statutory provision.¹⁰

77. Limitation of powers conferred by Sections 71 to 76.—

(1) The provisions of Sections 71, 73, 74, 75 and 76 shall be subject to the provisions of—

(a) Section 78, and

(b) any rule¹¹ in particular of any rule imposing any conditions on the appointment of persons to offices or any particular office requiring professional skill, and on the suspension or dismissal of persons so appointed.

(2) The provisions of Sections 74, 75 and 76 shall also be subject to the provisions of any regulation raising any maximum or minimum monthly salary prescribed in those sections with reference to the respective powers of the board, the [President]¹² and the Executive Officer over the staff.

1. *Municipal Board, Lucknow v. Aziz Husain*, 1948 O 282=1948 O W N 1.

2. *Subs.* for (30) and (15) respectively by S. 37 of U. P. Act VII of 1949.

3. *Subs.* for [chairman] by S. 61 of U. P. Act VII of 1949.

4. *Subs.* by S. 24 of U. P. Act V of 1932,

5. *Subs.* by S. 23 of *ibid.*

6. *Ins.* by U. P. Act VII of 1933.

7. *Subs.* by U. P. Act VII of 1933.

8. *Deleted by ibid.*

9. *Ins.* by U. P. Act VII of 1933.

10. *Banarsi Das v. Municipal Board, Moradabad*, 1939 A 310=1939 A L J 9=I L R 1939 A 231.

11. *For rules re. Sanitary Inspectors, Sub-Overseers, establishment for water works and drainage works and establishment for Electric Supply scheme.* *see* 1 409—419, 360-361, 361-362 and 384-385 respectively of the Municipal Manual of 1932 edition.

12. *Subs.* for (chairman) by S. 61 of U. P. Act VII of 1949.

Special provisions as to certain servants

78. Pensions and dismissal in case of servants of the government employed by board or vice versa.—(1) A board shall contribute to the pension and leave allowances of any servant—

- (a) whose services are lent or transferred by Government to the board, or
- (b) whose services are lent or transferred by the board Government, or
- (c) who is employed partly by Government and partly by the board.

(2) Such contribution shall be to the extent prescribed by any general rules¹ or special orders made by [the Government concerned]².

(3) A board shall not, without the assent of Government, dispense with the services of any servant described in clause (a) or (c) of sub-section (1) or finally dismiss from its service any servant described in clause (b) of sub-section (1), unless it has given Government at least six months' notice.

(4) In this section "Government" shall mean the [Central Government]³ or any [State Government].⁴

79. Leave allowances, provident fund, annuities and gratuities. (1) In every case where a board is entitled to pay a salary to any officer or servant, it shall, subject to any regulations⁵ in this behalf, be entitled to pay leave allowances to such officer, or servant.

(2) A board may establish and maintain a provident fund⁶ and may itself contribute thereto.

(3) A board may grant a gratuity, upon his retirement, to any servant of the board who is excluded from participation in the benefits of the provident fund.

(4) The board may, with the previous sanction of the [State Government],⁴ grant, or arrange for the purchase of, an annuity to—

For rules—

- (i) re. Sanitary Inspectors, *see* notes. no. 574/XI—707-E, d. Feb. 23, 1920, no. 2346/XI—800, d. Oct. 30, 1922, no. 1918-11/XI—16-E, d. Jan. 8, 1923, no. 903/XI—784-E, d. May 7, 1924, no. 3169/XI—16-E, d. Sept. 5, 1926, no. 1600/XI—784-E, d. June 11, 1928, no. 361/XI—707-E, d. March 22, 1929, no. 2749/XI—784-E, d. Sept. 19, 1930, no. 2074/XI—734-E, d. Aug. 10, 1931, no. 2841/XI—784-E, d. June 7, 1932, no. 435.VII/XI—784-E, d. Apr. 20, 1933, no. 3356 (6)/XI—784-E, d. Dec. 8, 1936, no. 3358(7)/XI—45, d. Feb. 22, 1938, no. 5240(2)/XI—54, d. Oct. 10, 1938 and no. 3624/XI—559, d. Dec. 8, 1938 and pp. 409—419 of M.M., 1952 edition.
- (ii) re. Overseers, *see* notes. no. 2309/XI—898-E, d. Aug. 24, 1928 and no. 5073/XI—898. E. d. Feb. 3, 1936 and pp. 360—361 of M. M.

iii, re. establishment for Water works and drainage work, *see* notes. no.

1906/XI—6-H, d. July 5, 1916, no. 4651/XI—362 d. Feb. 4, 1933 and no. 3314/XI—399. d. May 6, 1937 and pp. 361-362 of M. M. 1952 edition.

- (iv) re. Water Works Superintendent, Municipal Engineers and their Assistants, *see* notes. no. 2501/XI—373, d. Aug. 30, 1934 and no. 1114-I/XI—373. d. July 18, 1935 and p. 274 of M. M.

- (v) for establishment for electric supply scheme *see* not. no. 1906/XI—6-H, d. July 5, 1916, and pp. 384-385 of M. M. 1952 edition.

2. Subs. for [the G. G. in C.] by 'A. O. 1937.

3. Subs. for [Govt. of India] by A.O. 1937.

4. Subs. by the A. O. 1950 for (Prov. Govt.), which had been subs. by the A. O. 1937 for (L.G.)

5. *See* p. 450 of M.M. 1952 edition.

6. For Municipal Provident Fund, *see* notes. no. 1906/XI—6H, d. July 5, 1916, and no. R-47/XI—24, d. Feb. 10, 1933, on pp. 449-450 of M. M. 1952 edition.

- (a) any servant who, at the date of his retirement, has not been contributing to a provident fund established under sub-section (2) or has contributed thereto for a period of less than ten years, and
 - (b) any officer or servant injured, otherwise than by reason of his own default, in the execution of his duty, or, where such injury results in death, the family of such officer or servant.
- (5) A board may, with the like sanction instead of taking action under clause (b) of sub-section (4), grant a compassionate allowance to an officer or servant referred to therein, or to the family of such officer or servant.

80. Limitations of powers conferred by the previous section.—The provisions of section 79 shall be subject to the condition that the board shall not, without the special sanction of the [State Government],¹ grant to any officer or servant or to his family a pension, annuity or gratuity greater in amount than that to which he or it would have been entitled, under any general or special orders of the [Central Government]², [or State Government]³ if the service qualifying for the pension, annuity or gratuity had been service under [that Government]⁴ for the same time, on the same pay, and in other respects of the same character.

Liability of members, officers and servants

81. Liability of members for loss, waste or misapplication.—Every person shall be liable for the loss, waste or misapplication of any money, or other property, belonging to the board, if such loss, waste or misapplication is a direct consequence of his neglect or misconduct while a member of the board, and a suit for compensation may be instituted against him by the board with the previous sanction of the [Prescribed Authority]⁵ or by the [State Government]⁶ * * *

82. Penalty on member or President acquiring interest in contract, etc.—(1) A [member or President]⁷ of a board who, otherwise than with the permission in writing of the [Prescribed Authority]¹ knowingly acquires or continues to have, directly or indirectly, by himself or his partner, any share or interest in any contract or employment, with, by, or on behalf of the board, shall be deemed to have committed an offence under Section 168 of the Indian Penal Code⁹:

(2) Provided that a person shall not be deemed for the purposes of sub-section (1) to acquire, or continue to have, any share or interest in a contract or employment by reason only of his—

- (a) having a share or interest in any lease, sale or purchase of land or buildings, or in any agreement for the same, provided that such share or interest was acquired before he became a member, or

1. Subs. by A. O. 1950 for (Provl. Govt.) which had been subs. by A. O. 1937 for [L.G.] which was subs. for [G. G. in C.] by S. 2 and Sch. I of Act XXXVIII of 1920.

2. Subs. for [G.G. in C.] by A.O. 1937.

3. Ins. by S 2 and Sch. I of Act XXXVIII of 1920 and adapted by A. O. 1950 and 1937.

4. Subs. for [Govt.] by A.O. 1937.

5. Subs. for (Commissioner) by S. 60 of

U. P. Act VII of 1949.

6. Subs. by the A. O. 1950 for (Provl. Govt.) which had been subs. by the A. O. 1937 for (L. G.).

7. The words [in the name of the Secretary of State in Council] omit. by A.O. 1937.

8. Subs. for (member) by S. 38 of U.P. Act VII of 1949.

9. U. C. A. Vol. I, p. 214.

- (b) having a share in a joint stock company which shall contract with, or be employed by, or on behalf of, the board, or
- (c) having a share or interest in a newspaper in which an advertisement relating to the affairs of the board is inserted, or
- (d) holding a debenture or otherwise being interested in a loan raised by, or on behalf of, the board, or
- (e) being retained by the board as a legal practitioner, or
- (f) having a share or interest in the occasional sale of an article in which he regularly trades to the board to a value not exceeding, in any one year, such amount as the board, with the sanction¹ of [the State Government]², fixes in this behalf, or
- (g) being a party to an agreement made with the board under the provisions of Section 196 (c) or of Section 229.

Note.—See 1956 A 147; 1930 A 139 and 1939 A L J 1465.

83. Provision against servants being interested in contract, etc.—(1) A person who has directly or indirectly, by himself or his partner, a share or interest in a contract with, by, or on behalf of, a board or in any employment with, under, by or on behalf of, a board, other than as a municipal servant, shall be disqualified for being a servant of such board.

(2) A municipal servant who shall acquire or continue to have, directly or indirectly, by himself or his partner, a share or interest in any such contract or employment as aforesaid shall cease to be a municipal servant, and his office shall become vacant.

(3) A municipal servant who knowingly acquires or continues to have, directly or indirectly, a share or interest in a contract or, except in so far as concerns his employment as a municipal servant, in any employment with, under, by, or on behalf of, a board of which he is a servant, shall be deemed to have committed an offence under section 168 of the Indian Penal Code.

(4) Nothing in this section shall apply to any such share or interest in a contract or employment with, under, by, or on behalf of, the board as is referred to in clauses (b), (d) and (g) of sub-section (2) of Section 82, or to any share or interest acquired or retained, with the permission of the [Prescribed Authority]³, in any lease, sale or purchase of land or buildings, or in any agreement for the same.

84. All officers and servants of a board to be deemed public servants.—Every officer or servant of a board shall be deemed to be a public servant within the meaning of the Indian Penal Code⁴; and in the definition of “legal remuneration” in Section 161 of that Code, the word “Government” shall, for the purposes of this section, be deemed to include a board.

85. Penalty on specified municipal servants for failure to discharge their duties.—(1) A sweeper employed by a board who,—

- (a) except in accordance with the terms of a written contract of service, or with the permission of the board, resigns or abandons his employment, or

1. For delegation of powers, see not. no. 2400/XI—27H, d. July 29, 1916 and page 476 of M. M. 1952 edition.

2. Subs. by the A. O. 1950 for (the Provl.

Govt.) which had been subs. by the A. O. 1937 for (the Govt.)

3. Subs. for (Commissioner) by S. 60 of U.P. Act VII of 1949.

(b) without a reasonable cause of which notice has, when possible, been given to the board, absents himself from his duties, shall be liable upon conviction to imprisonment which may extend to two months.

(2) The [Prescribed Authority]¹ may direct that on and from a specified future date the provisions of sub-section (1) shall apply also to any other specified class of servants employed by a board whose functions intimately concern the public health or safety :

Provided that when a [Prescribed Authority]¹ makes an order under this sub-section he shall forthwith forward a copy thereof, with a statement of his reasons for making it, to the [State Government]² which may thereupon rescind the order or direct that it continue in force, with or without modification, permanently or for such period as it thinks fit.

Scope.—Sub-section (1) is intended to prevent cessation of work by a large number of sweepers or in other words a strike. A strike will not be reasonable cause within the sub-section, as by a reasonable cause the sub-section would include illness or festivities such as marriage in the family of sweepers.³ The provisions of this section are rigorous and must be used with caution. The sweeper who is guilty of abandonment or resigning Municipal service and if by his doing so sanitation might not be impaired then a lighter punishment would do, while the punishment is justified if there is danger to public health owing to a strike by scavengers.⁴

CHAPTER III

CONDUCT OF BUSINESS

Municipal meetings and proceedings

86. Meetings of a board.—(1) There shall be at least one meeting of the board in every month to be held on a day fixed by regulation or of which notice has been given in a manner provided by regulation in this behalf.

¹[(2) The [President]⁶ may convene a meeting whenever he thinks fit and shall, upon a requisition made in writing by not less than one-fifth of the members of the board and served on the [President]⁴ or sent by registered post acknowledgement due addressed to the Municipal Board at their office, convene a meeting within a period of one month from the date of the service or receipt of such requisition.]

(3) A meeting may be adjourned until the next or any subsequent day, and an adjourned meeting may be further adjourned in like manner.

(4) Every meeting shall be held at the municipal office (if any) or other convenient place of which notice has been duly given.

87. Transaction of business at meetings.—**** Subject to any provision to the contrary made by regulation in this behalf, any business may be transacted at any meeting :

**** Provided that no business which is required to be transacted by a special resolution shall be transacted unless previous notice of the intention to transact such business has been given :

1. Subs. for (Commissioner) by S. 60 of U. P. Act VII of 1949.
2. Subs. by the A. O. 1950 for (Provl. Govt.) which had been subs. by the A. O. 1937 for (L. G.).
3. *Basua v. Emperor*, 1935 A 216.
4. *Angoo v. Emperor*, 21 A L J 808= 1924 A 188.
5. Subs. by S. 7 of U. P. Act IX of 1933, for the following :

- “(2) The Chairman may, whenever he thinks fit, and shall, upon a requisition made in writing by not less than one-fifth of the members of the board, convene a meeting”.
6. Subs. for (Chairman) by S. 61 of U. P. Act VII of 1949.
7. The figures “(1)” and “(2)” respectively del. by S. 8 of U. P. Act IX of 1933.

¹[Provided also that nothing in this section shall apply to a motion that the board shall adopt a resolution expressing non-confidence in the [President]² or to a motion that the board shall adopt a resolution calling upon the [President]³ to resign].

Rules and Regulations—Effect.—The Municipal Regulations are a body of rules passed for the guidance of Municipalities in the conduct of their business. The Municipality when it engages a servant does not make it a part of its contract with him that in the conduct of its business it shall strictly observe these regulations. No declaratory suit can be filed for non-observance of these regulations in the dismissal of a servant, that he was still in service nor could he claim the continuance of his salary. If his discharge amounts to wrongful dismissal he would be entitled to damages.³

‘[87-A] Motion of non-confidence against President.—(1) Subject to the provisions of this section, a motion expressing non-confidence in the [President]² shall be made only in accordance with the procedure laid down below.

(2) Written notice of intention to make a motion of non-confidence on its [President]² signed by such number of members of the board as constitute not less than one-half of the total number of members of the board, together with a copy of the motion which it is proposed to make, shall be delivered in person together by any two of the members signing the notice to the District Magistrate.

(3) The District Magistrate shall then convene a meeting for the consideration of the motion to be held at the office of the board, on the date and at the time appointed by him which shall not be earlier than thirty and not later than thirty-five days from the date on which the notice under sub section (2) was delivered to him. He shall send by registered post not less than seven clear days before the date of the meeting, a notice of such meeting and of the date and time appointed therefor, to every member of the board at his place of residence and shall at the same time cause such notice to be published in such manner as he may deem fit. Thereupon every member shall be deemed to have received the notice.

(4) The District Magistrate shall arrange with the District Judge for a stipendiary civil judicial officer to preside at the meeting convened under this section, and no other person shall preside thereat. If within half an hour from the time appointed for the meeting, the judicial officer is not present to preside at the meeting, the meeting shall stand adjourned to the date and the time to be appointed and notified to the members by that officer under sub-section (5).

(5) If the judicial officer is unable to preside at the meeting, he may, after recording his reasons adjourn the meeting to such other date and time as he may appoint, but not later than fifteen days from the date appointed for the meeting under sub-section (3). He shall without delay communicate in writing to the District Magistrate the adjournment of the meeting. It shall not be necessary to send notice of the date and the time of the adjourned meeting to the members individually, but the District Magistrate shall give notice of the date and the time of the adjourned meeting by publication in the manner provided in sub-section (3).

1. Add. by S. 8 of *ibid.*

2. Subs. for [Chairman] by S. 61 of U. P. Act VII of 1919.

3. *Municipal Board, Shahjehanpur v. Sukha Singh*, 1937 A 264=1937 A I:J 153.

4. Add. by S. 9 of U. P. Act IX of 1933 and subs. by S. 5 of U. P. Act XIII of 1942 made by Governor in exercise of the powers assumed by him under S. 93 G. of L. Act, 1935, and which was re-enacted by S. 2(1) of U. P. Act XIII of 1948.

(6) Save as provided in sub-sections (4) and (5) a meeting convened for the purpose of considering a motion under this section shall not for any reason be adjourned.

(7) As soon as the meeting convened under this section has commenced, the judicial officer shall read to the board the motion for the consideration of which it has been convened and declare it to be open for discussion.

(8) No discussion on any motion under this section shall be adjourned.

(9) Such discussion shall automatically terminate on the expiry of three hours from the time appointed for the commencement of the meeting, unless it is concluded earlier. Upon the conclusion of the debate or upon the expiry of the said period of three hours, as the case may be, the motion shall be put to the vote of the board.

(10) The judicial officer shall not speak on the merits of the motion, nor shall he be entitled to vote thereon.

(11) A copy of the minutes of the meeting together with a copy of the motion and the result of the voting thereon shall on the termination of the meeting, be forwarded forthwith by the judicial officer to the [President and the]¹ District Magistrate [* * * *]².

[(11-A) As soon as may be after three days of the receipt of the copies mentioned in sub-section (11), the District Magistrate shall forward the same to the State Government, together, in the event of the motion of non-confidence having been carried, with a report whether or not the President has forwarded his resignation in accordance with the provisions of Sections 47 and 47-A];

(12) The motion shall be deemed to have been carried only when it has been passed by a majority of more than half of the total number of members of the board.[* * * *]⁴

(13) If the motion is not carried by a majority as aforesaid, or if the meeting cannot be held for want of a quorum, no notice of any subsequent motion of non-confidence in the same [President]⁷ shall be received until after the expiry of a period of twelve months from the date of the meeting.

(14) No notice of a motion of non-confidence under this section shall be received within twelve months of the assumption of office by a [President]⁷.

(15) Nothing done by any member of the board, the District Magistrate, the judicial officer or the [State Government]³ in pursuance of the provisions of this section shall be questioned in any Court].

District Magistrate.—An officer who succeeds temporarily to the chief executive administrator of a district, and who is able to exercise all the powers and perform all the duties conferred and imposed by the Code of Criminal Procedure on a District Magistrate, is a District Magistrate for the purposes of Section 80-A. Where on the transfer of a District Magistrate, another officer is, both in law and fact, a District Magistrate, the provisions of Section 87-A (2) are complied with even if he is designated as an officiating District Magistrate.⁶

Notice.—The procedure for notices of meetings is prescribed by Rules, which require that the motion or proposition to be brought forward at the meeting shall be "specified" which means that full text thereof shall be given in the notice circulated to members. It is however doubtful if this rule applies to the procedure prescribed for motions of non-confidence against the President. The procedure to be followed for the form of notice in such cases is the procedure laid down in

1. *Ins* by S. 59(1) of U. P. Act VII of 1949.

2. *Del.* by Act I of 1955.

3. *Subs.* by A.O. 1950 for [Prov. Govt.].

4. *Emd* by S. 59(2) of U. P. Act VII of 1949.

6. *Add.* by Act I of 1955.

7. *Subs.* for [Chairman] by S. 61 of *ibid.*

8. *Shiv Dayal v. State of U. P.*, 1953 A 664.

Section 87-A (6), which does not require that full text of the motion should be sent along with the notice. It is enough that the substance of the motion is made known to the members in the notice circulated to them for the meeting to be held to consider the same.² A person who is elected a member of a Board becomes a member of that Board on the date upon which he is declared to have been duly elected, and he can sign a notice under Section 87-A (2) even prior to his taking seat for the first time on the Board³.

Procedure.—It would be wise procedure that, so far as possible, a member is allowed to speak only once, except the mover of the motion, who would in ordinary circumstances, be given an opportunity to reply to the debate. Ordinarily, it is the privilege of the mover of the motion to reply to the debate and no other member can speak twice except with the permission of the Presiding Officer.⁴ Sub-section (12) of Section 87-A is somewhat ambiguously worded—the words “of more than half” are redundant. It was the intention of the legislature that a bare majority of the total number of the members of the Board would suffice for purpose of passing a no-confidence resolution⁵.

88. Quorum.—(1) It shall be necessary for the transaction of any business other than business which is required to be transacted by a special resolution that not less than one-third of the total number of members of the board for the time being shall be present.

(2) It shall be necessary for the transaction of business which is required to be transacted by special resolution that not less than one-half of such members shall be present :

Provided that when it is necessary to postpone any business at a meeting for want of the prescribed quorum, the [President]¹ after the transaction of such business as can be transacted, shall adjourn the meeting to another date, and the business postponed for want of the prescribed quorum shall be transacted on such date, or in the event of a further adjournment of the meeting to a subsequent date, on such subsequent date, notwithstanding any deficiency in the number of members present.

89. President of meeting.—If at a meeting neither the [President]¹ nor a [Vice-President]¹ is present, the members present shall elect one of their members to be the [President]¹ of the meeting, and such [President]¹ shall perform all the duties, and may exercise all the powers of the [President]¹ of a board when presiding at a meeting.

90. Publicity of meetings.—Every meeting shall be open to the public unless the [President]¹ thereof considers that the public should be excluded during the whole or any part of the meeting.

91. Power of President of meeting to maintain order.—Where, at a meeting of the board, any member or other person refuses to comply with any direction of the [President]¹ ruling any business, discussion or matter out of order, or otherwise regulating the conduct of members or of business, or where any member or person wilfully disturbs the meeting, the [President]¹ may require that member or person to withdraw from the meeting and, in the event of his omitting to do so, may employ against him such force as is necessary or as in good faith he believes to be necessary, for the purpose of removing and excluding him from the meeting.

92. Decision by vote.—(1) All questions which may come

1. Subs. for [Chairman] or [Vice-Chairman] by S. 61 of U. P. Act VII of 1949.
2. *Abdul Wajid v. State of U. P.*, 1955 A 708.
3. *Shri Ganesh Prasad Chaturvedi v.*

- District Magistrate, Jalaun*, 1956 A L J 58.
4. *Abdul Wajid v. State of U. P.*, 1955 A, 708.
5. *Shri Ganesh Prasad v. District Magistrate, Jalaun*, 1956 A L J 58.

before a meeting of a board shall be decided by a majority of the votes of the members present and voting.

(2) In case of an equality of votes, the [President]⁵ of the meeting shall have a second or casting vote.

(3) The foregoing provisions of this section shall be subject to the provisions of sub-section (6) of Section 94 and of any other provision of, or under this or any other enactment requiring a resolution to be supported by any proportion or number of the members.

"Majority"—Significance.—In the section "majority" of the votes has been used and not the greater number of votes, and by this the legislature obviously intended that there should be one question put at a time and not that votes should be asked for on two separate questions put simultaneously¹

"Voting" Meaning.—So long as a member is duly qualified to vote and records a vote, he is a member "who is present and voting." The person for whom he is voting in an election for chairmanship etc., if he turns out to be disqualified, it would render his vote useless, but it would not be accurate to say that the voting itself was invalid².

93. Right of certain officers to attend and speak at meetings.—[Chief Engineer, Local Self-Government Engineering Department, the Director of Medical and Health Services or the Assist. Director of Medical and Health Services]³ the Civil Surgeon of the district, the Executive Engineer, the Inspector of Schools and any other officer specially authorized by the [State Government]⁴ in this behalf shall be entitled to attend a meeting of the board and to address the board on any matter affecting their respective departments.

94. The minute book and resolutions.—(1) The names of the members present, and the proceedings held and resolutions passed, at a meeting of a board shall be entered in a book to be called the minute book.

(2) The minutes shall be read out at the meeting, or the next ensuing meeting, and, after, being passed as correct by the members (or a majority of them) present at the reading who were also present at the proceedings recorded in the minutes, shall be certified as passed by the signature of the [† President]⁵ of the meeting at which they are passed.

⁶[(3) Every resolution passed by a board at a meeting, shall, as soon thereafter as may be, be published in a local paper published in Hindi and where there is no such local paper, in such manner as the State Government may, by general or special order, direct.]

(4) Copies of every resolution passed by a board at a meeting shall, within ten days from the date of the meeting, be forwarded to the [Prescribed Authority]⁷ and the District Magistrate.

(5) When, subsequent to action being taken in respect of any resolution under sub-section (3) or (4), but before the minutes recording the resolution are signed as required by sub-section (2), any alteration

1. *Harnandan Prasad v. Kampla Prasad Kekar*, 1934 A 376=56 A 330.

2. *Ibid.*

3. *Subs.* by U. P. Act VII of 1953.

4. *Subs.* by the A. O. 1950 for (Provl. Govt.) which had been *subs.* by the A. O. 1937 for (L. G.).

5. *Subs.* for [Chairman] by S. 61 of U. P Act VII of 1949.

6. *Subs.* by U. P. Act VII of 1953.

7. *Subs.* for [Commissioner] by S. 60 of U. P. Act VII of 1949.

† In accordance with Section 2 (1) of

Uttar Pradesh Municipalities (Supplementary and Validation) Act, 1951 (U. P. Act XV of 1951) (*see* Appendix to this Act), during the period commencing from June 21, 1949, and until a new board is constituted by the first General Election held under the U. P. Municipalities Act, 1916, next after the commencement of the aforesaid Act XV of 1951 for the word "President" occurring in Section 94, the word "Chairman" shall stand substituted.

is made in the wording of such minutes the alteration shall be notified by publication or communicated to the [Prescribed Authority]¹ and the District Magistrate, as the case may be.

(6) A resolution of a board shall not be modified or cancelled within six months after the passing thereof—

(a) unless previous notice has been given setting forth fully the resolution which it is proposed to modify or cancel and the motion or proposition for the modification or cancellation of such resolution, and

(b) except by a resolution supported by not less than one-half of the total number of members of the board for the time being.

Conduct of correspondence, accounts, budgets, etc.

95. Conduct of correspondence, accounts, budgets, etc.—
The following matters shall be regulated and governed by rules made by the [State Government]², namely—

(a) the intermediate office or offices, if any, through which correspondence between boards and the [State Government]² or officers of the [State Government]² and representations by the board addressed to the [State Government]² shall pass;

(b) the preparation of plans and estimates for works which are to be partly or wholly constructed at the expense of the board;⁴

(c) the authority by whom and the conditions subject to which such plans and estimates may be sanctioned;⁴

(d) the agency by which such plans and estimates shall be prepared and by which works shall be carried out;⁴

(e) the accounts to be kept by boards, the manner in which accounts shall be audited and published, and the power of auditors in respect of disallowance and surcharge;⁶

(f) the date before which a meeting shall be held for the sanction of the budget;⁶

(g) the method and forms to be adopted in the preparation of budget;⁶

(h) the conditions subject to which a board in respect of which an order has been issued under Section 102 shall be entitled

1. Subs. for [commissioner] by S. 60 of U. P. Act VII of 1949.

2. Subs. by the A. O. 1950 for (Provl. Govt.) which had been subs. by the A. O. 1937 for (L. G.).

3. For rules, see not. No. 1906/XI-6 H., dated July 5, 1916 and G. O. No. 93-O. M./XI-522E. dated Aug. 31, 1920, and p. 339 of Municipal Manual, 1952 edition.

4. For rules, see not. No. 313/XI-747E., dated Jan. 29, 1926, G. O. No. 1130/XI-747E. dated April 29, 1926, and nots. No. 1015/XI-91 dated April 3, 1930, No. 1378/XI-747E., date May 5, 1931 No. 1782/XI-747E. dated June 18, 1931, No. 3152/XI-91-29, dated Oct. 23, 1931, No. 3299-VI/XI-91-1929, date Dec. 7, 1932, No. 2032/XI-91-1929, dated June 26, 1933, No. 522-I/XI-91-1929, dated May 13, 1935, and

No. 1456/XI-747E., date May, 23 1936, and pp. 371-383 of the Municipal Manual 1952 edition.

5. For rules, see not. No. 4000/XI-10-H., dated Oct. 4, 1916 and pp. 326-327, and pp. No. 460-461 of the Municipal Manual, 1952 edition, and also of the Municipal Account Code.

6. For rules, see nots. no. 1858/XI-10-H, dated July 3, 1916, no. 4000/XI-10H, d. Oct. 4, 1916, no. 332/XI-10 H, d. Feb. 18, 1919, no. 659/XI-345-29, d. Feb. 25, 1931 and no. 4718/XI-10 H, d. Jan. 6, 1933 and G. Os. no. 2290/XI-428B, d. Oct. 2, 1897, nos. 1860 and 1874/XI-10H, d. July 3, 1916, and no. 3/XI-27H, dated Jan. 2, 1918, and pp. 310-326 of the Municipal Manual, 1952 edition,

to vary or alter its budget¹; * * *

(i) the returns, statements, and reports to be submitted by boards;² [and]⁴.

[(j) regular periodical inspection of office and works of the board.]

Contracts

96. Sanctioning of contracts.—(1) The sanction of the board by resolution is required in the case of every contract—

(a) for which budget provision does not exist; or

(b) involving a value or amount exceeding one thousand rupees in the case of a contract by the board of a city and two hundred and fifty rupees in any other case.

(2) Any contract, other than a contract of either description specified in sub-section (1), may be sanctioned by resolution of the board, or by a committee of the board (not being an advisory committee) empowered in this behalf by regulation, or by any one or more than one officer or servant of the board so empowered:

(3) Provided that where the plans and estimates of a project have, in accordance with any rule made in this behalf, been sanctioned by the board, and the execution of the work has been entrusted by the board to an engineer in its service or employment, the board may, with the previous sanction of the [Prescribed Authority]⁶ empower by resolution such engineer to sanction all contracts, or any one or more contracts of any particular description required for the execution of the project, and may in like manner impose any condition or restriction on the exercise of the power so conferred.

Scope.—The distinction between this section and Section 65, Contract Act is that while the former applies to contracts only, the latter covers the agreements as well. The result is that the general law would permit a party to get relief when on account of a special law the agreement cannot be considered to be enforceable, in other words, characterized as a contract⁷.

Empowered—meaning.—The word “empowered” does not mean empowered by resolution⁸.

Principle of ‘quantum meruit.’—If a contract is not in accordance with the directions contained in Section 96 (1) (b), but the work is done and is enjoyed by the Board, the principle of *quantum meruit* would apply and the contractor would be compensated under Sections 65 and 70 of the Indian Contract Act⁹.

Wrong Name—Effect.—The contract for night soil would be valid if there is a resolution of the Board sanctioning it. If the name of the contractor is entered as *N* instead of *M* in the resolution either by mistake or as a benamidar for his uncle *M* and it appears that *N* never made any deposit or paid anything towards the contract and never got into possession, the name *N* must be deemed to be an alias of *M* and the contract cannot be invalid on that ground¹⁰.

1. See footnote No. 6 on previous page.

2. The word (and) omit. by S. 62 (a) of U. P. Act VII of 1949.

3. For rules, see nots. no. 4000/XI—10-H, dated October 14, 1916, no. 4278/XI—10H, dated Nov. 28, 1917, and no. 1797/XI—781E d. July 25, 1924, and G. O. no. 308/XI—30, d. Feb. 11, 1933 and pp. 325—339 of the Municipal Manual 1952 edition.

4. Add. by S. 62 (b) of U. P. Act VII of 1949.

5. Add by S. 62(c) *ibid*.

6. Subs. for (Commissioner) by S. 60 *ibid*.

7. *Madura Municipality v. Algirisemi Naidu*, 1939 M 723.

8. *Municipal Board, Agra v. Ram Lal*, 1936 A 723.

9. *Ibid*. But see *Municipal Board, Lucknow v. S. C. Deb* 1932 O 193=9 O W N 461 (F B).

10. *Mohammad Ramzan v. Municipal Board, Tanda*, 1934 O 439 (F B)=10 Lucknow 176=11 O W W 1171.

97. Execution of contracts.—(1) Every contract made by or on behalf of a board whereof the value of the amount exceeds Rs. 250 shall be in writing.

¹[Provided that unless the contract has been duly executed in writing, no work including collection of materials in connection with the said contract shall be commenced or undertaken.]

(2) Every such contract shall be signed—

(a) by the [President]² or a [Vice-President]² and by the Executive Officer or a Secretary, or

(b) by any person or persons empowered under sub-section (2) or (3) of the previous section to sanction the contract if further and in like manner empowered in this behalf by the board.

(3) If a contract to which the foregoing provisions of this section apply is executed otherwise than in conformity therewith it shall not be binding on the board.

Scope.—A contract by the Board taking certain plots on lease on a yearly rent exceeding Rs. 250 signed by the Secretary alone and not by the Chairman or Vice-Chairman is not binding on the Board. The lessor cannot take benefit of Section 65 Contract Act if he has not raised an issue that the Board had obtained profits from the use of the land nor produced any evidence to prove that any profits had accrued³.

Contract—Validity.—This section merely requires that a contract should be in writing and signed by the officers or persons mentioned in the section. There is nothing in the section that the contract should bear the impress of the seal of the municipal Board⁴. It is also not necessary that a complete list of all the detailed items of work to be done during the whole period should be given in the written agreement⁵.

A Municipal Board selling a right to collect tahbazari by auction for Rs. 1900, must have the contract reduced to writing otherwise the transaction would be invalid⁶.

98. Registration of instruments.—Where the Indian Registration Act, 1908 or any rule made thereunder, requires or permits any act to be done with reference to a document by a person executing or claiming under the same, and the document has been executed on behalf of a board or is a document under which a board claims, the act may, notwithstanding anything to the contrary contained in the aforesaid enactment or in any rule thereunder, be done by the [President]², the Executive Officer or a Secretary of the board, or by any other officer of the board empowered by regulation in this behalf.

The Budget

99. The Budget.—(1) Every board shall have prepared, and laid before it, at a meeting to be held in every year before such date as is fixed by rule⁷ in this behalf, a complete account of the actual and expected receipts and expenditure for the year ending on the thirty-first day of March next following such date together with a budget estimate of the income and expenditure of the board for the year commencing on the first day of April next following.

1. Add. by S. 63 of U. P. Act VII of 1949.

2. Subs. for (Chairman) and [Vice-Chairman] by S. 61 *ibid.*

3. *Municipal Board, Etah v. Morudhuj* 1940 A 340=1940 A W R 243. See also *Municipal Board, Lucknow v. S. G. Deb*, 1932 O 193.

4. *Rounak Ali v. Municipal Board, Unnao*, 1947 O W N 212.

5. *Municipal Board, Agra v. Ram Lal*, 1936 A 723=58 A 1069.

6. *Sheikh Kallan v. The Municipal Board Aligarh*, 1956 A L J 715.

7. For rule, see footnote under S. 95 (f) (g) and also M. M. 1952 edition.

(2) Subject to the provisions of Section 102 the board shall at such meeting decide upon the appropriations and the ways and means contained in the budget estimate and by special resolution, sanction a budget, which shall be submitted to the [State Government]¹ or to such officers as the [State Government]¹ by order directs in this behalf.

(3) Subject to the like provisions the board may vary or alter from time to time as circumstances may render desirable, by special resolution, the budget sanctioned under sub-section (2).

100. The revised budget.—As soon as may be after the first day of October a revised budget for the year shall be framed and such revised budget shall, so far as may be, subject to all the provisions applicable to a budget made under Section 99.

101. Minimum closing balance shown in budget.—In framing a budget a board shall provide for the maintenance of such minimum closing balance (if any) as the [State Government]¹ may by order prescribe.²

102. Budget of indebted boards.—Where in the opinion of the [State Government]¹ the condition of indebtedness of any board is such as to make the [control of the State Government]³ over its budget desirable, the [State Government]¹ may, by order declaring that such is the case, direct that the budget of such board shall be subject to the sanction of the [State Government]¹ or of the [Prescribed Authority]⁴ and that the power, to vary or alter the budget under sub-section (3) of Section 99 shall be subject to conditions to be prescribed by rule.⁵

103. Prohibition of expenditure in excess of budget.—(1) Where a budget has been passed the Board shall not incur any expenditure under any of the heads of the budget, other than a head providing for the refund of taxes in excess of the amount passed under that head, without making provision for such excess by the variation or alteration of the budget.

(2) Where any expenditure under any head providing for the refund of taxes is incurred in excess of the amount passed under that head, provision shall be made without delay for such expenditure by the variation or alteration of the budget.

Committees and joint committees

104. Appointment of committees.—(1) A board may⁶ [where so required by the (State Government)⁷ shall].

(a) by regulation establish such committees as it thinks fit, [or as the (State Government)⁷ may direct] for the purpose of exercising such powers, performing such duties or discharging such functions as may be delegated to a committee under Section 112, and

1. Subs. by the A. O. 1950 for (Provl. Govt.) which had been subs. by the A. O. 1937 for (L. G.).

2. The power has been delegated to Commissioner, see not. no. 1838/XI—10-H., dated July 3, 1916, pp. 325-326 of Municipal Manual, 1952 edition.

3. Subs. for [control of Govt.] by A. O. 1937.

4. Subs. for [Commissioner] by S. 60 of U. P. Act VII of 1949.

5. See not. no. 47/18/XI—10-H., d. Jan. 6, 1933, and rule 6 on pp. 310-311 of Municipal Manual, 1952 edition.

6. Add by S. 64(1) of U. P. Act VII of 1949.

7. Subs. by A. O. 1930 for [Provl. Govt.]

¹[(b) by single transferable vote elect such of its members as it thinks fit for a period not exceeding one year to any committee so established, in accordance with the method prescribed in the Regulations made by the Chairman² of the Legislative Council of [Uttar Pradesh]³ in pursuance of Orders 82 and 87 of the Standing Orders for the conduct of business and procedure to be followed in the Legislative Council and dated March 15, 1921, the words 'the President' and 'the Council' occurring in the said Regulations being for purposes of this clause read as [President]⁴ of the Board, and 'Board' respectively, provided that the [State Government]⁵ may from time to time as it thinks fit amend the said Regulations for the purposes of this clause; and]

(c) by resolution remove any member [elected]⁶ under clause (b); [(1-A). In any committee exclusively for the education of girls established under the preceding sub-section not less than one-half of its members shall be women members of the Board together with such other women who, being residents of the municipality but not members of the board, are, by reason of their interest in the education of girls, appointed under Section 105.

The Chairman of any such committee shall be a person elected from amongst the women members of such committee]⁷

(2) Provided that a board may from time to time by resolution establish, and appoint the members of one, or more than one, advisory committee for the purpose of inquiring into and reporting on any matter in respect of which a decision of the board is required by or under this Act.

105. Appointment of persons other than members.—(1) Notwithstanding anything contained in this Act it shall be lawful for a board by a resolution supported by not less than one-half of the whole number of members for the time being, to appoint as members of a committee any persons of either sex who are not members of the board, but who, in the opinion of the board, possess special qualifications for serving on such committee :

Provided that the number of persons so appointed on a committee shall not exceed one-third of the total number of the members of the committee.

All the provisions of this Act, and of any rules relating to the duties, powers, liabilities, disqualifications, and disabilities of members shall, save as regards a disqualification on the grounds of sex, be applicable, so far as may be, to such persons.

106. Vacancies in committee.—A vacancy occurring in any committee may at any time be filled up by the appointment by the board, in the manner prescribed by Section 104, or Section 105, of another member or person.

107. President of a committee.—(1) The board may by resolution appoint a [President]⁸ for any committee.

1. Subs. by S. 3(1) of U. P. Act XX of 1934.

2. Subs. for [President] by A. O. 1950.

3. Subs. by A. O. 1950 for [the United Provinces of Agra and Oudh].

4. Subs. for (Chairman) by S. 61 of U. P. Act VII of 1949.

5. Subs. by the A. O. 1950 for (Provl.

Govt.) which had been subs. by the A. O. 1937 for (L. G.).

6. Subs. for [Appointed] by S. 3(2) of U. P. Act XX of 1934.

7. Add. by S. 64(2) of U. P. Act VII of 1949.

8. Subs. for (Chairman) by S. 61 of U. P. Act VII of 1949.

(2) In default of a [President]¹ being appointed by the board, a committee shall appoint its own [President]¹ from among its members.

108. Procedure of committees.—(1) The provisions of sub-sections (1) and (2) of Section 92, of Section 93, and of sub-sections (1), (2), (4) (5) and (6) of Section 94 shall apply to the proceedings of committees of a board, as if the words "a committee" were substituted for the words "a board" or "the board" wherever they occur therein.

(2) Committees may meet and adjourn as they think proper, but the †[President]¹ of the committee may, whenever he thinks fit, and shall, upon the written request of the †[President]¹ of the board or of not less than two members of the committee, call a meeting of the committee.

(3) Subject to the provision contained in sub-section (4) no business shall be transacted at any meeting unless more than one-fourth of the members of the committee are present thereat.

(4) Where it is necessary to postpone any business at a meeting of a committee for want of the prescribed quorum, the procedure specified in sub-section (3) of Section 88 shall be followed.

109. Subordination of committees to board.—(1) The board may at any time call for any extract from any proceedings of any committee and for any return, statement, account or report concerning or connected with any matter with which the committee has been authorized, or directed to deal.

(2) Every committee shall, with all convenient speed, comply with any requisition of the board made under sub-section (1).

110. Joint committee.—(1) A board may, and if so required by the [State Government]², shall combine with one, or more than one, other assenting local authority to appoint, by means of a written instrument subscribed by the local authorities concerned, a joint committee for the purpose of transacting any business in which they are jointly interested.

(2) Such instrument shall prescribe the number of members who shall be chosen by each local authority to represent it upon the joint committee, the person who shall be [President]¹ thereof, the powers being powers exercisable by one or more of the concurring local authorities, which may be exercised by the joint committee, and the method of conducting the proceedings and correspondence thereof.

(3) Such instrument may from time to time be varied or rescinded by a further instrument subscribed by all the local authorities concerned, and, in the event of the rescission of any instrument under this sub-section, all proceedings thereunder shall be deemed inoperative with effect from a date to be specified in such further instrument.

(4) Any difference of opinion arising in the course of any proceedings under the foregoing provisions of this section between two or more

1. Subs. for [Chairman] by S. 61 of U. P. Act VII of 1949.

†In accordance with Section 2(1) of Uttar Pradesh Municipalities (Supplementary and Validation) Act, 1951, (see Appendix to this Act,) during the period commencing from June 21, 1949, and until a new board is constituted by the first

General Election held under the U. P. Municipalities Act, 1916, next after the commencement of this Act, for the word "President", occurring in Section 108, the word "Chairman" shall stand substituted.

2. Subs. by the A. O. 1950 for (Prov. Govt.) which had been subs. by the A. O. 1937 for (L. G.).

local authorities shall be decided by reference to the [State Government]¹ under Section 325.

²[**110-A. Formation of State Municipal Boards Union and its functions.**—(1) The municipal boards in [Uttar Pradesh]³ may combine to form an association to be called the [State]⁴ Municipal Boards Union, provided that no such association shall be formed unless more than half the number of municipal boards in the [State]⁵ severally pass a resolution signifying their intention to become members.

(2) The functions of the union formed under sub-section (1) of this section shall be to examine problems of common interest to the municipal boards, to advise the municipal boards on the improvement of municipal administration and to perform such other function as the [State Government]⁶ may from time to time prescribe.

(3) The following matter shall be regulated and governed by rules made by the [State Government]⁶, viz.

- (a) the constitution and aims and objects of the union ;
- (b) the amount and the method of contribution by the municipal boards to the union ;
- (c) the management and control of finances of the union ;
- (d) the holding of joint sessions of the union with a [State]⁴ district boards union to discuss matters pertaining to the joint interest of both the unions and, if required, for the establishment of a joint committee for the discussion and examination of special problems common to such unions ; and
- (e) generally such other matter as may be necessary for the purpose of this section.]

Exercise and delegation of powers by board

111. Powers of which the exercise is reserved to a board acting by resolution.—(1) The powers, duties, and functions specified in the second column of Schedule I, with the exception of those against which an entry is shown in the third column of that schedule, may be exercised, and shall be performed or discharged, by a board by resolution passed at a meeting of the board and not otherwise.

(2) Nothing in sub-section (1) shall be construed to prevent a resolution of a board being carried into execution by any agency duly authorized in this behalf by or under this Act, or by a servant of the board acting within the scope of his employment.

112. Delegation of powers by board.—(1) With the exception of a power, duty or function—

- (a) specified in the second column, and against which no entry is shown in the third column of Schedule I ;
- (b) reserved or assigned to a [†President]⁷ by clauses (a), (b) and (c) of Section 50 or by Section 51 ; and

1. Subs. by the A. O. 1950 for (Provl. Govt.) which had been subs. by the A. O. 1937 for (L. G.).
 2. Add. by S. 6 of U. P. Act I of 1945, made by the Governor in exercise of the powers assumed by him under S. 98 of Govt. of India Act, 1935 and which was re-enacted by S. 2 (1) of U. P. Act XIII of 1948.
 3. Subs. for [the United Provinces] by A. O. 1950.

4. Subs. by the A. O. 1950 for [Provincial].

5. Subs. by *ibid* for [Province].

6. Subs. by *ibid* for [Provl. Govt.].

7. Subs. for (Chairman) by S. 61 of U. P. Act VII of 1949.

†In accordance with Section 2 (1) of Uttar Pradesh Municipalities, (Supplementary and Validation) Act, 1951, (see Appendix to this Act) during the period commencing from

[(c) Where there is an Executive Officer or a Medical Officer of Health, reserved to the Executive Officer by Section 60 or to the Medical Officer of Health by Section 60-A];¹

a board may delegate by regulation all or any of the powers, duties or functions conferred or imposed on, or assigned to, a board under this Act.

(2) Except as provided in sub-section (3), a board shall not itself exercise, perform or discharge, or interfere in the exercise, performance or discharge of any power, duty or function which it has delegated under sub-section (1).

(3) The delegation by the board under sub-section (1) of any power, duty or function may be made subject to the condition that all or any orders made in pursuance of such delegation shall be subject to the right of appeal to or revision by, the board within a specified period.

(4) Nothing in the foregoing provisions of this section shall be deemed to prevent a resolution of a committee of a board being carried into execution by any agency duly authorized in this behalf by or under this Act, or to preclude any servant of the board from acting within the scope of his employment.

Scope.—Where the powers mentioned in Schedule II and Section 269 of the Act are duly delegated to the medical officer, he is quite competent to issue notices under Section 269 and the notices issued by him are quite valid².

Validity of acts and proceedings

113. Presumptions and savings.—(1) No vacancy in a board or in a committee of a board shall vitiate any act or proceeding of a board or of such committee.

†(2) No disqualification, or defect in the election, nomination or appointment, of a person acting as a member of a board or of a committee appointed under this Act, or as the [President or the Chairman, as the case may be]³ of a meeting of a board or of such committee, shall be deemed to vitiate any act or proceeding of the board or the committee, if the majority of the persons present at the time of the act being done, or proceeding being taken, were qualified and duly elected [or nominated]⁴ members of the board or committee.

(3) Until the contrary is proved, any document or minutes which

June 21, 1949, and until a new board is constituted by the first General Elections held under the U. P. Municipalities Act, 1916, next after the commencement of this Act, for the word "President" occurring in Section 112, the word "Chairman" shall stand substituted.

1. Subs. by S. 26 of U. P. Act V of 1932.

2. *Govind Deoji v. Municipal Board, Brindaban*, 1938 A 110=1937 A L J 1358.

3. Subs. for [Chairman] by S. 65 of U.P. Act VII of 1949.

4. Ins. by S. 11 of U.P. Act II of 1919.

† In accordance with Section 2 (1) of Uttar Pradesh Municipalities (Supplementary and Validation) Act, 1951, (see Appendix to this Act), during the period commencing from June 21, 1949, and until a new

board is constituted by the first General Election held under the Municipalities Act, 1916, next after the commencement of this Act, the following amended sub-section (2) of Section 113 shall be in operation.

"113. (2) No disqualification, or defect in the election, nomination, or appointment, of a person acting as a member of a board or of a committee appointed under this act, or as the Chairman of a meeting of a board or of such Committee, shall be deemed to vitiate any act or proceeding of the board or of the committees if the majority of the persons present at the time of the act, being done or proceeding being taken were qualified and duly elected or nominated members of the board or Committee."

purport to be the record of the proceedings of a board or committee shall, if substantially made and signed in the manner prescribed for the making and signing of the record of such proceedings, be deemed to be a correct record of the proceedings, of a duly convened meeting held by a duly constituted board or committee whereof all the members were duly qualified.

CHAPTER IV

MUNICIPAL FUND AND PROPERTY

114. Municipal fund.—(1) There shall be for each municipality a municipal fund, and there shall be placed to the credit thereof—

(a) all sums received by or on behalf of the board ;

(b)***1

(2) Nothing in this section shall affect any obligations of a board arising from a trust legally imposed upon or accepted by it.

²[114-A. Power to raise loans.—A board may, with the previous sanction of the [State Government]³ and, subject to rules prescribed in this behalf, raise loans in the open market by issue of debentures.]

115. Custody and investment of municipal fund.—⁴[(1) The Municipal fund shall be kept in the Government Treasury or sub-treasury or in the bank to which the Government treasury business has been made over or, where the State Government so directs, in a Scheduled bank specified by it in this behalf.]

(2) In places where there is no such treasury or sub-treasury or bank, the municipal fund may be kept with a banker, or person acting as a banker, who has given such security for the safe custody and repayment on demand of the fund so kept as the [State Government]³ may in each case think sufficient :

(3) Provided that nothing in the foregoing provisions of this section shall be deemed to preclude a board from, with the previous sanction of the [State Government]³, investing in any of the securities described in Section 20 of the Indian Trust Act, 1882, or placing on fixed deposit with a Presidency Bank any portion of its municipal fund which is not required for immediate expenditure.

116. Property vested in board.—Subject to any special reservation made by the [State Government]³, all property of the nature hereinafter in this section specified and situated within the municipality shall vest in and belong to the Board, and shall, with all other property which may become vested in the board be under its direction, management and control, that is to say,—

(a) all public town walls, gates, markets, slaughter houses, manure and night-soil depots and public buildings of every description which, have been constructed or are maintained out of the municipal fund ;

1. *Cl. (b) viz.* "all fines realised on conviction under the provisions of this Act or of the Prevention of Cruelty to Animals Act, 1890, or under S. 34 of the Police Act, 1861, or under the provisions of any Act wherein or whereunder provision is made for the time being credited to the muni-

cipality ;" omit. by A. O. 1937.

2. *Ins.* by S. 66 of U. P. Act VII of 1949.

3. *Subs.* by the A. O. 1950 for (Provl. Govt.) which had been *subs.* by the A. O. 1937 for (L. G.).

4. *Subs.* by Act I of 1955.

- (b) all public streams, lakes, tanks, springs wells and works for the supply, storage and distribution of water for public purposes, and all bridges, buildings, engines, materials, and things, connected therewith or appertaining thereto, and also any adjacent land not being private property appertaining to any public tank or well ;
- (c) all public sewers, drains, culverts and watercourses and all works, materials and things appertaining thereto ;
- (d) all dust, dung, ashes, refuse, animal matter or filth or rubbish of any kind, or dead bodies of animals, collected by the board from the streets, houses, privies, sewers, cesspools or elsewhere or deposited in places appointed by the board under Section 273 ;
- (e) all public lamps, lamp-posts and apparatus connected therewith or appertaining thereto ;
- (f) all land or other property transferred to the board by [Government]¹ or by gift, purchase or otherwise for local public purposes ; and
- (g) all public streets and the pavements, stones and other materials thereof, and also all trees, erections, materials, implements and things existing on or appertaining to such streets.

Scope.—This section vests in the municipality the care of night-soil deposits and also of rubbish and night-soil collected by the municipality from houses. An arrangement by which the municipality undertakes to collect all night-soil and refuse from private houses, through the instrumentality of customary sweepers for a reward arranged by contract between them from time to time does not affect this right of the municipality². The word "control" means "lawful control" under the provisions of this section. It can never be the intention that the Board could commit a trespass and then create a by-law which would prevent the person trespassed upon from exercising his rights³.

Public Streets.—All public streets also vest in the municipality under Section 116 (g). It is the surface and not the soil which constitutes the street, while the soil continues to vest in the owner⁴. But it would be putting too narrow a meaning upon the words "shall vest in and belong to the Board", if it were to be held that the Board was not competent of itself in the due course and exercise of its powers to authorise an erection of a portico upon the margin (foot path) of a street which has become a public street within the meaning of Section 209⁵. The Chairman of the Public Works Committee cannot close a public street, unless there is a resolution of the Board or the powers have been delegated to him authorising him to close it⁶.

Nazul Land.—When Nazul land is entrusted to the management of Municipal Board, the transfer of management confers no proprietary right in property. Any lease by the Board is executed in the capacity of an agent⁷.

117. Compulsory acquisition of land.—Where a board, for the purpose of exercising any power or performing any duty conferred or imposed upon it by or under this or any other enactment, desires the [State Government]⁸ to acquire on its behalf, permanently or temporarily, any land or any right in respect of land under the provisions of the

1. Subs. by A. O. 1950 for [His Majesty.]

2. *Hari Lal v. Emperor*, 45 A 281=21 A L J 149.

3. *L. Sohan Lal v. Emperor*, 1936 A 192=1936 A L J 48=37 Cr L J 451.

4. *Mohammad Raza Khan v. Mohammad Askari Khan*, 1924 A 579=46 A 470 See also 1945 O A 100 (CC).

5. *Maharaja Man Singh of Sewai Jaipur*

v. Arjun Lal, 1937 P C 299=1937 O W N 851=1937 A L J 1126=I L R 1937 A 901=64 I A 354.

6. *Subrati v. Madhuri Suran*, 1934 O 100=11 O W N 149.

7. *B. Ugar Sen Jain v. L. Tribhawan Narain*, 1943 A 82=1942 A L J 671. See also 1929 A 912.

8. Subs. by the A. O. 1950 for (Provl. Govt.) which had been subs. by the A. O. 1937 for (L. G.)

Land Acquisition Act, 1894, or of other existing law, the [State Government]² may at the request of the board, [in the manner prescribed]² acquire such land or such right under the aforesaid provisions; and, on payment by the board to the [State Government]² of the compensation awarded thereunder and of the charges incurred by the [State Government]² in connexion with the proceedings, the land or right, as the case may be, shall vest in the Board.

118. Power of board to manage and control property entrusted to its management.—Subject to the provisions of the next section and to any condition imposed by the owner of the property, a board may manage and control any property entrusted to its management and control.³

Trust or Waqf.—There is a difference between a public well and the well which has been dedicated to the public for certain specific purposes only, not a transfer of the property to the public, and the well does not come under Section 116 (b). The trust or waqf comes under Section 118, and cannot be transferred by the Board in view of Section 124.⁴

119. Public institutions.—(1) The management, control and administration of every public institution maintained exclusively out of the municipal fund shall vest in the board.

(2) Any other public institution may be vested in, placed under the management, control and administration of the board; provided that the extent of the independent authority of the board in respect thereof may be prescribed by rule.

(3) All property, endowments and funds belonging to any public institution vesting in, or placed under the management, control and administration of a board shall be held by the board in trust for the purpose, to which such property, endowments and funds were lawfully applicable at the time when the institution became so vested or was so placed.

(4) Provided that nothing in the foregoing provisions of this section shall be held to prevent the vesting of any trust property in the Treasurer of Charitable Endowments under the Charitable Endowments Act, 1890.

120. Application of municipal fund and property.—(1) The municipal fund and all property vested in a board shall be applied for the purposes, express or implied, for which, by or under this or any other enactment, powers are conferred or duties or obligations are imposed upon the board.

(2) Provided that the board shall not incur any expenditure for acquiring or renting land beyond the limits of the municipality or for constructing any work beyond such limits except—

(a) with the sanction of the [State Government]⁵, and

(b) on such terms and conditions as the [State Government]⁶ imposes.

(3) Provided also that priority shall be given, in the order set forth below, to the following liabilities and obligations of a board—

(a) liabilities and obligations arising from a trust legally imposed upon, or accepted by, the board;

2. Add. by S. 67 of U. P. Act VII of 1949.

3. For rules re. nazul entrusted to the management of local bodies, see pp. 8—15 of Nazul Manual, 1949 edition.

4. *Chimman Lal v. Zahur-uddin*, 1938 A 548=1938 A L J 901 Overruling 1938 A 66.

6. Subs. by the A. O. 1950 for (Provl. Govt.) which had been subs. by the A. O. 1937 for (L. G.).

- (b) the repayment of, and the payment of interest on, any loan incurred under the provisions of the Local Authorities Loans Act, 1914;
- (c) the payment of establishment charges, including such contributions as are referred to in Section 78, and the salary, allowances and pension of an Executive Officer appointed [by the State Government]²;
- (d) any sum ordered to be paid from the municipal fund under sub-section (3) of Section 35, sub-section (2) of Section 36, Section 126, sub-section (3) of Section 163, or sub-section (3) of Section 320.

121. Disposal of municipal fund when area ceases to be a municipality.—(1) When by reason of a notification under Section 3 any local area ceases to be a municipality and is immediately placed under the control of some other local authority, the municipal fund and property vesting in the board shall vest in such other local authority, and the liabilities of the board shall be transferred to such other local authority.

(2) When, in like manner, any local area ceases to be a municipality and is not immediately placed under the control of another local authority, the balance of the municipal fund and other property vesting in the board shall vest in [the State Government]³, and the liabilities of the board shall be transferred to [the State Government]⁴.

122. Disposal of municipal fund when area ceases to be included in a municipality.—(1) When by reason of a notification under Section 3 any local area ceases to be a municipality and is immediately placed under the control of some other local authority, such portions of the municipal fund and other property vesting in the board shall vest in that other local authority and such portion of the liabilities of the board shall be transferred to that other local authority, as the [State Government]⁴ after consulting the board and that other local authority, declares by notification.

(2) When, in like manner, any local area ceases to be included in a municipality and is not immediately placed under the control of some other local authority, such portion of the municipal fund and other property vesting in the board shall vest in [the State Government]² and such portion of the liabilities of the board shall be transferred to [the State Government]³ as the [State Government]⁴, after consulting the board and considering any representations made by the inhabitants of the excluded area, declares by notification.

(3) Provided that where an excluded local area is placed under the control of a local authority not existing at a date previous to the exclusion, the [State Government]⁵ before making a declaration under sub-section (1), shall take into consideration any representation made by the inhabitants of the excluded area.

(4) Provided also that the foregoing provisions of this section shall not apply in any case where the circumstances, in the opinion of the

2. Subs. by the A. O. 1950 for [by the Provl. Govt.] which had been subs. by A. O. 1937 for [by Govt.]

3. Subs. by A. O. 1950 for [His Majesty for the purposes of the Province.] The words [for the purposes of the province] were ins. by A. O. 1937.

4. Subs. by A. O. 1950 for [the Provl. Govt.] which had been subs. by the A. O. 1937 for [Secretary of State in Council].

5. Subs. by The A. O. 1950 for [Provl. Govt.] which had been subs. by the A. O. 1937 for [L. G.].

[State Government]¹, render undesirable the transfer of any portion of the municipal fund or liabilities.

123. Application of funds and property accruing to Government under Section 121 or 122.—Any municipal fund or portion of a municipal fund or other property of a board accruing under the provisions of Section 121 or 122 to [the State Government]², shall be applied in the first place to satisfy any liabilities of the board transferred under such provisions to [the State Government]³, and secondly for the benefit of the inhabitants of the local area.

124. Power of board to transfer property.—(1) Subject to any restriction imposed by or under this Act, a board may transfer by sale, mortgage, lease, gift, exchange or otherwise any property vested in the board, not being property held by it on any trust the terms of which are inconsistent with the right to so transfer.

(2) Notwithstanding anything contained in sub-section (1) the board may, with the sanction of the [State Government]⁴, transfer to [Government]⁴, any property vested in the board, but not so as to affect any trust or public rights to which the property is subject.

(3) Provided that every transfer under sub-section (1), other than a lease for a term not exceeding one year, shall be made by instrument in writing sealed with the common seal of the municipality and otherwise complying with all conditions in respect of contracts imposed by or under this Act.

Waqf or Trust.—The Board has no power to transfer waqf or trust property, where the trust or waqf was made long before the Board came into existence.⁵ The Board can however appoint a contractor and transfer the right of collecting fees.⁷

125. Payment of compensation from municipal fund.—The board may make compensation out of the municipal fund to any person sustaining any damage by reason of the exercise of any of the powers vested in the board, its officers or servants under this or any other enactment or vested in the [State Government]⁴, the [Prescribed Authority]⁶, or the District Magistrate under Section 34, and shall make such compensation where the person sustaining the damage was not himself in default in the matter in respect of which the power was exercised.

126. Payment by board for special police protection at fairs, etc.—(1) When special police protection is, in the opinion of the [State Government]¹, requisite on the occasion of a fair, agricultural show or industrial exhibition managed by a board, the [State Government]¹ may provide such protection, and the board shall pay the whole charge thereof or such portion of such charge as the [State Government]¹ considers equitably payable by it.

(2) If the sum charged is not paid the District Magistrate may make an order directing the person having the custody of the municipal fund to pay the expense from such fund.

1. Subs. by the A. O. 1950 for (Provl. Govt.) which had been subs. by the A. O. 1937 for (L. G.).

2. Subs. by A. O. 1950 for [His Majesty for the purposes of the Province.] The words (for the purposes of the Province) were ins. by A. O. 1937.

3. Subs. by the A. O. 1950 for the [Provl. Govt.] which had been subs.

by the A. O. 1937 for [Secretary of State in Council].

4. Subs. by the A. O. 1950 for [His Majesty].

5. Subs. for [Commissioner] by S. 60 of U. P. Act VII of 1949.

6. *Chinman Lal v. Zahur-uddin*, 1938 A 548=1938 A L J 901.

7. 1939 A W R 525 (F. B.).

127. Other matters relating to municipal fund and property.—The following matters shall be regulated and governed by rules made by the [State Government]¹ under Section 296, namely,—

- (a) the authority on which money may be paid from the municipal fund;²
- (b) the conditions on which property may be acquired by the board or on which property vested in the board may be transferred by sale, mortgage, lease, exchange or otherwise;³ and
- (c) any other matter relating to the municipal fund or municipal property in respect of which the Act makes no provision or insufficient provision and provision is necessary.²

CHAPTER V

MUNICIPAL TAXATION

Imposition and alteration of taxes

128. Taxes which may be imposed.—(1) Subject to any general rules⁴ or special orders⁵ of the [State Government]⁶ in this behalf, the taxes which a board may impose in the whole or any part of a municipality are—

- (i) a tax on the annual value of buildings or lands or of both;
- (ii) a tax on trades and callings carried on within the municipal limits and driving special advantages from, or imposing special burdens on, municipal services;
- (iii) a tax on trades, callings and vocations including all employments remunerated by salary or fees;
- (iv) a tax on vehicles and other conveyances plying for hire or kept within the municipality or on boats moored therein;
- (v) a tax on dogs kept within the municipality;
- (vi) a tax on animals used for riding, driving, draught or burden, when kept within the municipality,
- (vii) a toll on vehicles and other conveyances, animals, and laden coolies entering the municipality,
- *(viii) an octroi on goods or animals brought within the municipality for consumption, use or sale therein.]
- (ix) a tax on inhabitants assessed according to their circumstances and property;
- (x) a water-tax on the annual value of buildings or lands or of both;
- (xi) a scavenging tax;

1. Subs. by rhe A. O. 1950 for [Provl. Govt.] which had been subs by the A. O. 1937 for [L. G.]

2. For rules see the Municipal Account Code in M. M. Vol. II, 1951 edition.

3. For rules, see notes. no. 1906/XI—6H, d. July 5, 1916, no. 2025/XI—274, d. June 8, 1935, and no. 3260/XI—836, d. Dec. 9, 1939 and pp. 350—351 and 357 of Municipal Manual, 1952 edition.

4. For rules and orders, see Govt. of I. Resolutions nos. 4201, d. Feb. 4, 1890, G. I. letter no. 161/4193—D—8, 49, d. Oct. 10, 1949, and no. 312A, d. May 1, 1901, U. P. Resolution no. 3463/XI—271, E d. Sept. 19, 1916,

notes. no. 1906/XI—6H, d. July 5, 1916, G. Os. no. 1345/XI—I. C., d. May 3, 1902, and G. G. Os. no. F—30—I/37-H, d. Aug. 25, 1937, no. D—1214-F., d. Feb. 16, 1938, no. D. 7038F—42, d. May 27, 1942, no. 302-M.C./XI—244F, d. Sept. 13, 1917 and no. 4101/XI—244E., d. Nov. 8, 1917, and pp. 288—309 of Municipal Manual. 1952 edition.

5. Subs. by the A. O. 1950 for [Provl. Govt.] which had been subs. by the A. O. 1937 for (L.G.) which had been subs. for (G. G. in C.) by S. 2 and sch. I of Act XXXVIII of 1920.

6. Subs. by U. P. Act VII of 1953.

(xii) a tax for the cleansing of latrines and privies ;
 1[(xiii) a tax on goods imported into, or exported from, any municipality in which an octroi was in force on the sixth day of July, 1917, or with the previous sanction of the [Central Government]² any other municipality ;] * * *³

(xiv) ⁴[any other tax which the [State Legislature]⁵ has power to impose in the [State]⁶, under [the Constitution]⁷.

(2) Provided that taxes under clauses (iii) and (ix) of sub-section (1) shall not be levied at the same time. [nor shall an octroi on goods under clause (viii) of sub-section (1) and a tax under clause (xiii) of sub-section (1) be levied at the same time]⁸. [Provide also re th no tax under clause (iv) of sub-section (1) shall be levied ndos eo jta tpany motor vehicle.]⁹

¹⁰[(3) Nothing in this section shall authorise the imposition of any tax which the [State Legislature]⁶ has no power to impose in the [State]⁶ under [the Constitution]⁷ :

Provided that a board which immediately before the commencement of [the Constitution]¹¹ was lawfully levying any such tax under this section as then in force, may continue to levy that tax until provision to the contrary is made by ¹²[Parliament].

Scope.—No municipal institution can be effective without a power of taxation and as such this section gives those powers. Sub-section (1) is however controlled by sub-sections (2) and (3). The question whether the tax is in accordance with the provisions of the Municipalities Act or not is concluded by the fact that the imposition of the tax has been notified in Gazette by the Government. After the notification it is not open to anybody to question the validity of the tax¹³. But if the tax imposed is illegal and beyond the jurisdiction of the Municipal Board, the Civil Court can prevent the realisation of money not really due under the law¹⁴.

Clause (i) Annual Value.—"Annual Value" has been defined in Section 140. For liability of this tax see Section 194.

Clause (ii).—The words 'carried on' denote continuity. A person can be said to be carrying on trade in the ordinary sense of the word, when he is working for his own profit and not when he is in receipt of a fixed salary and works for an employer as a salaried clerk¹⁵.

Clause (iii).—This clause has to be read along with sub-section (2). As it is evident from a comparison of this clause with clause (ix) they overlap. It is impossible to dissect the various heads under which the circumstances and property tax has been levied, e. g., tax on perfumery and grocery levied under clause (ix) is a tax on trade under clause (iii) and the Board is entitled to collect only one tax¹⁶.

Clause (iv)—Scope.—This clause clearly means that all carts either kept in the municipality or outside but plying for hire in the municipality are liable to be licensed¹⁷. Where a person has a brick kiln outside the municipality and keeps bullock carts which take the bricks to persons within the municipality, such carts must

1. Cl. (xiii) was *ins.* by S. 2 of U. P. Act I of 1918.

2. *Subs.* for [G. G. in C.] by A. O. 1937.

3. Cl. (xiiiA) *ins.* by S. 2 and Sch. I of Act XXXVIII of 1920, was *omit.* by A.O. 1937.

4. *Subs.* by A. O. 1937 for "any tax not authorized under cl. (i) to (xiiiA) to the proposals for imposing which sanction has been given by the L. G. and confirmed by the G. G. in C. under sub-s. (3) of S. 133" as amended by S. 2 and Sch. I of Act XXXVIII of 1920.

5. *Subs.* by A. O. 1950 for [Provincial Legislature].

6. *Subs.* by *ibid* for [Province].

7. *Subs.* by *ibid* for [the Govt. of India Act, 1935].

8. *Add* by S. 3 of U. P. Act I of 1918.

9. *Add* by S. 22 and Sch. II of U. P. Act V of 1935.

10. *Add.* by A. O. 1937.

11. *Subs.* by A. O. 1950 for [Part III of the said Act].

12. *Subs.* by *ibid* for [the Central Legislature].

13. *Emperor v. Har Datt*, 1936 A 743 = 1936 A L J 962.

14. *Devi Prasad v. Municipal Board, Kanauj*, 1949 A 741. See also 1948 A 382 (F. B.).

15. *Brij Bhushan Lal v. Municipal Board, Kanauj*, 1924 A 567 = 46 A 685.

16. *Davi Prasad v. Municipal Board, Kanauj*, 1949 A 741.

17. *Mewa Ram v. Emperor*, 1943 A 13.

be licensed¹. The word "kept" connotes some sort of a permanent retention, and motor cars brought by chance visitors are not vehicles "kept"². A lorry is a vehicle³.

Clause (vii)—Scope.—The toll is leviable not on passenger, but on laden vehicles. The amount would vary according to the number of passengers. This fact cannot and does not make the toll tax leviable on passengers, the tax remains leviable on the vehicle and the person in charge is liable for the tax⁴.

The "toll" is a tax levied for the use of public roads and it cannot be imposed on the vehicles going out of the limits of the Municipal Board nor on passengers in the vehicle⁵.

Clause (viii)—Scope.—The words "brought within the municipality" imply that goods or animals are imported from a place entirely outside the municipal limits and brought inside such limits, they are not meant to cover a case of transit of goods from one part to another within the municipality⁶. The Schedule exempts certain goods from this tax including machines or sets of machine to be worked by electric power, such as electric fans⁷. Corks are not liable to octroi duty⁸.

Appeals.—"Octroi" is one of the other taxes mentioned under Section 160 (1) which are subject to an appeal to the District Magistrate. Therefore the "assessment" by octroi Moharrir is appealable to the District Magistrate and no civil suit would lie⁹.

Clause (ix)—Scope.—A person is liable under this clause on account of his residence and occupation of immovable property within municipal limits and the fact that he has his office outside is of no consequence¹⁰. Similarly a sub-judge who is discharging the duties of his office in Municipal area is not liable to tax under this clause, if he resides outside Municipal area¹¹. The circumstances and property "tax should be assessed on the net income and not on the gross income as the word "income" is the "balance of gain over loss"¹². In the case of a firm carrying on banking business the expression profit is more appropriate than the expression income, as the assessment has to be made on net profits to be calculated after deducting from the gross profits all expenses, necessarily incurred for the purpose of carrying on the business and earning the gross profits¹³. And if such a firm is a branch office of another bank, it is entitled at the time of assessment to a deduction of the amount paid by it as interest to its principal bank besides other expenses¹⁴.

Clause (x)—Income Tax.—The amount of house tax and the amount of water tax imposed under the Act, and paid by the owner as a lessor under Section 149 should be deducted from the *bona fide* annual value of the property, determined under Section 9 of the Income Tax Act on the ground that the amount is an annual charge, which is not a capital charge to which the property is subject.

Clause (xiii)—Import-meaning.—The word "import" literally means "carried into" or "brought into". When the goods are received by a consignee and are brought by him into municipal limits he "imports" them, within the meaning of the Act. The word cannot be interpreted to mean that only those goods can be said to have been imported or brought into the municipal limits of a town which are either kept, consumed or sold by the consignee of the goods within municipal limits¹⁵.

If biris are imported within the municipal limits a liability to pay the octroi duty would be created¹⁶.

1. *Municipal Board, Saharanpur v. Jagdish Saran*, 1939 A 519.

2. *Lachmi Nath v. The Lucknow Municipal Board*, 5 O W N 441=1928 O 306.

3. 1930 A 222.

4. *Emperor v. Har Datt*, 1936 A 743=1936 A L J 962.

5. *Raghubir Singh v. Municipal Board, Hardwar*, 1956 A 324.

6. *Ajmeri Sheikh v. Emperor*, 1934 A 39=1934 A L J 80.

7. *Municipal Board, Banaras v. Krishna & Co.* 1935 A 760=1935 A L J 635.

8. *Re: through M. B. Lalithur v. Uttam Chand*, 1950 A 541.

9. *Munna Lal & Sons v. Municipal Board*, 1935 A 153=57 A 655.

10. *D. B. C. Madge v. Municipal Board, Sitapur* 1937 O 468=1937 O W N

926.

11. *Gauri Shankar Varma v. Municipal Board, Sitapur*, 10 O W N 24=1933 O 91.

12. *Upper Jamna Valley Electricity Supply Co. v. Notified Area, Mowana*, 1942 A 323=1942 A L J 273.

13. *Allahabad Bank Ltd., v. Municipal Board, Sitapur*, 1936 O 206=1936 O W N 185.

14. *Uraiya Pay office of Imperial Bank v. N. A. Committee, Auriya*, 1938 A 302.

15. *Hardwari Lal firm v. M. B. Dehra Dun*, 1939 A 736=1939 A L J 1030.

16. *The Commissioner of Income Tax v. Messrs Gappumal Kanhaiya Lal*, 1950 S. C. 5; *The New Piece Goods Bazar Co. Ltd., v. Commissioner of Income Tax*, 1950 S. C. 165.

128. Restrictions on the imposition of water-tax.—The imposition of a tax under clause (x) of sub-section (1) of Section 128 shall be subject to the following restrictions, namely,—

- (a) that the tax shall not be imposed on land exclusively used for agricultural purposes, or, where the unit of assessment is a plot of land or a building as hereinafter defined, on any such plot or building of which no part is within a radius, to be fixed by rule in this behalf for each municipality, from the nearest standpipe or other water-work whereat water is made available to the public by the board ; and
- (b) that the tax is imposed solely with the object of defraying the expenses connected with construction, maintenance, extension or improvement of municipal water-works and that all moneys derived therefrom shall be expended solely on the aforesaid object.

Explanation—In this section—

- (a) “building” shall include the compound (if any) thereof, and where there are several buildings in a common compound, all such buildings and the common compound ;
- (b) “a plot of land” means any piece of land held by a single occupier, or held in common by several co-occupiers, whereof no one portion is entirely separated from any other portion by the land of another occupier or of other co-occupiers or by public property.

130. Restrictions on the imposition of other taxes.—The imposition of a tax under clause (xi) or (xii) of sub-section (1) of Section 128 shall be subject to the following restrictions, namely,—

- (a) that the tax is imposed solely with the object of defraying the expenses connected with the scavenging of houses and buildings or the cleansing of latrines and privies, as the case may be, and that all moneys derived therefrom shall be expended solely on the aforesaid object ; and
- (b) that the tax shall not be assessed on any house or building, or leviable from the occupier of any house or building unless the board under Section 196, clause (a), undertakes the house-scavenging or the cleansing of the latrines or privies, of such house or building.

¹[130-A. Power of State Government to require board to impose taxes.—(1) The [State Government]² may, by general or special order, published in the official Gazette, require a board to impose any tax mentioned in Section 128, not already imposed, at such rate and within such period as may be specified in the notification, and the Board shall thereupon act accordingly.

(2) The [State Government]² may require a board to [increase, modify or vary]³ the rate of any tax already imposed and thereupon the board shall [increase, modify or vary]⁴ the tax as required.

(3) If the board fails to carry out the order passed under sub-section (1) or (2), the [State Government]² may pass suitable order

1. *Ins.* by S. 68 of U. P. Act VII of

1949.
2. *Subs.* by A. O. 1950 for [Provl. Govt].

3. *Subs.* by Act I of 1955.

4. *Ibid.*

[imposing, increasing, modifying or varying]¹ the tax, and thereupon the order of the [State Government]², shall operate as if it had been a resolution duly passed by the board.]

131. Framing of preliminary proposals.—(1) When a board desires to impose a tax, it shall by special resolution frame proposals specifying—

(a) the tax, being one of the taxes described in sub-section (1) of Section 128, which it desires to impose ;

(b) the persons or class of persons to be made liable, and the description of property or other taxable thing or circumstances in respect of which they are to be made liable, except where and in so far as any such class or description already sufficiently defined under clause (a) or by this Act ;

(c) the amount or rate leviable from each such person or class of persons ;

(d) any other matter referred to in Section 153, which the [State Government]³ requires by rule to be specified.

(2) The board shall also prepare a draft of the rules which it desires the [State Government]³ to make in respect of the matters referred to in Section 153.

(3) The board shall, thereupon, publish in the manner prescribed in Section 94 the proposals framed under sub-section (1) and the draft rules framed under sub-section (2) along with a notice in the form set forth in Schedule III.

Administrator.—If a Municipal Board is superseded by an Administrator the provisions of Sections 131 to 135 will continue to be the procedure which must be followed when a tax is proposed to be imposed with this modification that the place of a special resolution of the Board is taken by an order of the Administrator⁴.

132. Procedure subsequent to framing proposals.—(1) Any inhabitant of the municipality may, within a fortnight from the publication of the said notice, submit to the board an objection in writing to all or any of the proposals framed under the preceding section, and the board shall take any objection so submitted into consideration and pass orders thereon by special resolution.

(2) If the board decides to modify its proposals or any of them, it shall publish modified proposals and (if necessary) revised draft rules along with the notice indicating that the proposals and rules (if any) are in modification of proposals and rules previously published for objections.

(3) Any objections which may be received to the modified proposals shall be dealt with in the manner prescribed in sub-section (1).

(4) When the board has finally settled its proposals, it shall submit them along with the objections (if any) made in connection therewith to the [Prescribed Authority]⁵.

133. Power of State Government or Prescribed Authority to reject, sanction or modify proposals.—(1) In the case of a municipality other than a city, if the proposed tax falls under clauses (i) to (xii) of sub-section (1) of Section 128, the [Prescribed Authority]⁵, after considering the objections received under sub-section (4) of Section 132, may either refuse to sanction the proposals or return them to

1. Subs. by Act I of 1955.

2. Subs. by A.O. 1950 for [Provl. Govt.]

3. Subs. by the A. O. 1950 for (Provl. Govt.) which had been subs. by the A. O. 1937 for (L. G.).

4. *Shri Kedar Nath v. Municipal Board, Gorakhpur*, 1956 A L J 198=1956 A W R 141.

5. Subs. for [Commissioner] by S. 60 of U. P. Act VII of 1949.

the board for further consideration or sanction them without modification or with such modification not involving an increase of the amount to be imposed, as he deems fit.

(2) In any other case the [Prescribed Authority]¹, shall submit the proposals and objections to the [State Government]², who may pass any of the orders described in sub-section (1).

(3) * * *

134. Resolution of board directing imposition of tax.—(1) When the proposals have been sanctioned by the [Prescribed Authority]¹ or the [State Government]², * * *³ the [State Government]², after taking into consideration the draft rules submitted by the board, shall proceed forthwith to make under Section 296, such rules in respect of the tax as for the time being it considers necessary.

(2) When the rules have been made the order of sanction and a copy of the rules shall be sent to the board, and thereupon the board shall by special resolution direct the imposition of the tax with effect from a date to be specified in the resolution.

135. Imposition of tax.—(1) A copy of the resolution passed under Section 134 shall be submitted to the [State Government]² if the tax has been sanctioned by the [State Government]², and to the [Prescribed Authority]¹, in any other case.

(2) Upon receipt of the copy of the resolution the [State Government]², or [Prescribed Authority]¹ as the case may be, shall notify in the [official Gazette]⁴, the imposition of the tax from the appointed date, and the imposition of a tax shall in all cases be subject to the condition that it has been so notified.

(3) A notification of the imposition of a tax under sub-section (2) shall be conclusive proof that the tax has been imposed in accordance with the provisions of this Act.

Notification-Effect.—A notification of the imposition of a tax shall be conclusive proof that the tax has been imposed in accordance with the provisions of this Act. It is not open, after notification to question the validity of the tax.⁵

136. Procedure for altering taxes.—The procedure for abolishing a tax, or for altering a tax in respect of the matters specified in clauses (b) and (c) of sub-section (1) of Section 131, shall, so far as may be, be the procedure prescribed by Sections 131 to 135 for the imposition of a tax.

Scope.—This section prescribes for the abolition and alteration of a tax, and has no concern with the imposition of a new tax, which is the subject-matter of Section 131. Where the Municipality altered the rate at which octroi was levied on certain articles and imposed octroi on certain new articles, but the notification issued under Section 135 used the word "amendment in the rates of octroi," if could not be said that the notification notified the imposition of octroi on the new articles and hence the levy of octroi on new articles would be invalid⁷.

1. Subs. for [Commissioner] by S. 60 of U. P. Act VII of 1949.
2. Subs. by the A. O. 1950 for [Prov. Govt.] which had been subs. by the A. O. 1937 for (L. G.).
3. Sub. S. (3) re: submission, in certain cases, of orders of the State Govt. for confirmation of the Central Govt. which was amended by S. 4 of U. P. Act I of 1918 and Act XXXVIII of 1920 was omit. by the A. O. 1937.

4. The words [or when the sanction of the L. G. has been confirmed by the G. G. in C., as the case may be] omit. by the A. O. 1937.
5. Subs. for [Gazette] by the A. O. 1937.
6. *Emperor v. Har Datt*, 1936 A 743 = 1936 A L J 962 = 1936 A W R 840.
7. *Municipal Board, Jhansi v. Sri Dwarka Prasad Agarwal*, 1956 A L J 139 = 1956 A W R 223.

137. Power of State Government to remedy or abolish tax.—(1) Whenever it appears, on complaint made or otherwise to the [State Government]¹, that the levy of any tax is contrary to the public interest or that any tax is unfair in its incidence, the [State Government]¹ may, after considering the explanation of the board of the municipality concerned, by order require such board to take measures within a time to be specified in the order, for the removal of any defect which it considers to exist in the tax or in the method of assessing or collecting the tax.

(2) Upon the failure or inability of the board to comply, to the satisfaction of the [State Government]¹, with an order made under sub-section (1), the [State Government]¹, may by notification suspend the levy of the tax, or of any portion thereof, until the defect is removed, or may abolish or reduce the tax.

Consolidated taxes

138. Consolidation of taxes.—(1) For the purpose of assessing, levying or collecting, but not for the purpose of imposing or granting exemption from, the taxes described in clauses (i), (x) and (xi) of sub-section (1) of Section 128, a board may consolidate any two or more of such taxes which are imposed upon buildings or lands or both :

(2) Provided that in any register or assessment list relating to a consolidated tax and used for the purpose of informing any person of his liability thereunder or for the purpose of securing compliance with the provisions of Section 129 or 130, the board shall apportion the consolidated tax amongst the several taxes comprised therein, so as to show approximately the amount assessed or collected on account of each separate tax.

139. Deductions required by exemptions.—(1) In assessing a consolidated tax effect shall be given to any partial or total exemption, from any single tax comprised therein.

(2) Such effect shall be given—

(a) in the case of partial exemption, by means of the deduction from the total amount of the consolidated tax which would otherwise be leviable or assessable in respect of any buildings, or lands or both to which the exemption applies, of a proportionate part, corresponding to the exemption, of the amount which might otherwise have been assessed on account of the single tax ; and

(b) in the case of a total exemption, by means of the deduction from such total amount of the whole amount assessed, on account of the single tax.

Assessment and levy of taxes on the annual value of buildings or lands or both

140. Definition of annual value.—(1) “Annual value” means,—

(a) in the case of railway stations, hotels, colleges, schools, hospitals, factories and other such buildings, a proportion not exceeding five per centum to be fixed by rule¹ made in this behalf of the sum obtained by adding the estimated present cost of erecting the building to the estimated value of the land appurtenant thereto ; and

1. Subs. by the A. O. 1950 for [Provl. Govt.] which had been subs. by the A. O. 1937 for [L. G.].

2. For a model rule, see Municipal Manual, 1952 edition.

- (b) in the case of a building or land not falling within the provisions of clause (a), the gross annual rent for which such building, exclusive of furniture or machinery therein, or such land is actually let, or where the building or land is not let or in the opinion of the board is let for a sum less than its fair letting value, might reasonably be expected to let from year to year.

(2) Provided that where the annual value of any building would, by reason of exceptional circumstances, in the opinion of the board, be excessive if calculated in the aforesaid manner, the board may fix the annual value at any less amount which appears to it equitable.

141. Preparation of assessment list.—(1) When a tax on buildings or lands or both is imposed, the board shall cause an assessment list of all buildings or lands or both in the municipality to be prepared, containing—

- (a) the name of the street or mohalla in which the property is situated ;
- (b) the designation of the property, either by name or by number sufficient for identification ;
- (c) the names of the owner and occupier, if known ;
- (d) the annual letting value or other particulars determining the annual value ; and
- (e) the amount of the tax assessed thereon.

(2) For the purpose of making such assessment list the board may from time to time appoint, with or without remuneration, any person or persons, whether members or not ; and the person or persons so appointed may, for such purpose, make an inspection of any property concerned.

142. Publication of list.—When the assessment list has been prepared, the board shall give public notice of the place where the list or a copy thereof may be inspected ; and every person claiming to be either owner or occupier of property included in the list, and an agent of such person shall be at liberty to inspect the list and to make extracts therefrom without charge.

Scope.—The provision of the Act relating to assessment and fixing of liability are mandatory. A roll prepared in accordance with provisions of Sections 142, 143, 144, can be reasonably regarded as conclusive proof of the liability of the persons, whose names appear on the roll. No such sanctity however attaches to a document which has been prepared in utter disregard of the provisions of those Sections.¹

143. Objections to entries in list.—(1) The board shall at the same time give public notice of a date, not less than one month thereafter when it will proceed to consider the valuation and assessments entered therein and in all cases in which any property is for the first time assessed or the assessment is increased, it shall also give notice thereof to the owner or occupier of the property, if known.

(2) All objections to valuations and assessments shall be made to the board, before the date fixed in the notice, by application in writing stating the grounds on which the valuation and assessment are disputed, and all applications so made shall be registered in a book to be kept by the board for the purpose.

(3) The board, or a committee empowered by delegation in this behalf, or an officer [of Government]¹, or the board to whom, with the permission of the [Prescribed Authority]², the board delegates, and it is hereby empowered so to delegate by resolution, powers in this behalf, shall, after allowing the applicant an opportunity of being heard in person or by agent,—

- (a) investigate and dispose of the objections,
- (b) cause the result thereof to be noted in the book kept under sub-section (2), and
- (c) cause any amendment necessary in accordance with such result to be made in the assessment list.

144. Authentication and custody of list.—(1) When all objections made under Section 143 have been disposed of, and all amendments required by sub-section (3) of that section have been made in the assessment list, the said list shall be authenticated by the signature of the [President]³ or, in the case of delegation under Section 143 to a committee or to an officer [of Government]¹ or of the board, by the signatures of not less than two members of such committee or by the signature of the officer aforesaid; and the persons or person so authenticating the list shall certify the consideration of all objections duly made and the amendment of the list so far as required by the decisions on such objections.

(2) The list so authenticated shall be deposited in the municipal office, and shall, thereupon, be declared by public notice to be open for inspection.

145. Revision and duration of list.—(1) A new assessment list shall ordinarily be prepared in the manner prescribed by Sections 141 to 144 once in every five years.

(2) Subject to any alteration or amendment made under Section 147 and to the result of any appeal under Section 160; every valuation and assessment entered in a valuation list shall be valid from the date on which the list takes effect in the municipality and until the first day of April next following the completion of a new list.

146. Conclusiveness of entries in list.—An entry in an assessment list shall be conclusive proof,—

- (a) for any purpose connected with a tax to which the list refers, of the amount leviable in respect of any building or land during the period to which the list relates, and
- (b) for the purpose of assessing any other municipal tax, of the annual value of any building or land during the said period.

147. Amendment and alteration of list.—(1) The board may at any time alter or amend the assessment list—

- (a) by entering therein the name of any person or any property which ought to have been entered or any property which has become liable to taxation after the authentication of the assessment list; or
- (b) by substituting therein for the name of the owner or occupier of any property the name of any other person who has

1. Subs. by the A. O. 1950 for (of the Crown) which had been subs. by the A. O. 1937 for (of Govt.).
2. Subs. for [Commissioner] by S. 60 of

U. P. Act VII of 1949.
3. Subs. for [Chairman] by S. 61 of U. P. Act VII of 1949.

- succeeded by transfer or otherwise to the ownership or occupation of the property; or
- (c) by enhancing the valuation of, or assessment on, any property which has been incorrectly valued or assessed by reason of fraud, misrepresentation or mistakes; or
 - (d) by re-valuing or re-assessing any property the value of which has been increased by additions or alterations to buildings; or
 - (e) where the percentage on the annual value at which any tax is to be levied has been altered by the board under the provisions of Section 136, by making a corresponding alteration in the amount of the tax payable in each case; or
 - (f) by reducing upon the application of the owner, [or on satisfactory evidence that the owner is untraceable and the need for reduction established, upon its own initiative]¹ the valuation of any building which has been wholly or partly demolished or destroyed; or
 - (g) by correcting any [clerical, arithmetical or other apparent error]².

(2) Provided that the board shall give at least one month's notice to any person interested of any alteration which the board proposes to make under clause (a), (b), (c) or (d) of sub-section (1) and of the date on which the alteration will be made.

(3) The provisions of sub-sections (2) and (3) of Section 143 applicable to the objections thereunder mentioned shall, so far as may be, apply to any objection made in pursuance of a notice issued under sub-section (2) and to any application made under clause (f) of sub-section (1).

(4) Every alteration made under sub-section (1) shall be authenticated by the signature or signatures of the person or persons authorized by Section 144 and, subject to the result of an appeal under Section 160, shall take effect from the date on which the next instalment falls due.

148. Obligation to supply information for purposes of amendment.—(1) When a building is built, re-built or enlarged, the owner shall give notice thereof to the board within fifteen days from the date of completion of such building, re-building or enlargement, or from the date of the occupation of such building, whichever date happens first.

(2) Any person failing to give the notice required by sub-section (1) shall be punished upon conviction with a fine which may extend to fifty rupees or ten times the amounts of the tax payable on the said building or enlargement for a period of three months, whichever is greater.

Essentials of offence.—Under this section it is not essential for the prosecution to establish some bad motive or guilty knowledge or dishonest intention on the part of the accused person. Any person who fails to give notice of completion of construction or enlargement of a building within the period fixed renders himself liable to the penalty irrespective of his motive, knowledge or intention³.

1. *Ins.* by S. 12 of U. P. Act XVII of 1934.

2. *Subs.* by Act I of 1955.

3. *Municipal Board, Ghaziabad v. Ha Saran Das*, 1940 A 19=1939 A L) 1034.

149. Liability for payment of certain taxes on annual value.—(1) [Except when otherwise provided by rule]¹, every tax (other than a scavenging tax or tax for the cleansing of latrines and privies) on the annual value of buildings or lands or of both shall be leviable primarily from the actual occupier of the property upon which the said taxes are assessed, if he is the owner of the buildings or lands or holds them on a building or other lease from the [Government]² or from the board, or on a building lease from any person.

(2) In any other case the tax shall be primarily leviable as follows, namely,—

- (a) if the property is let, from the lessor ;
- (b) if the property is sub-let, from the superior lessor ;
- (c) if the property is unlet, from the person in whom the right to let the same vests.

(3) On failure to recover any sum due on account of such tax from the person primarily liable, the board may recover from the occupier of any part of the buildings or lands in respect of which it is due that portion thereof which bears to the whole amount due the same ratio as the rent annually payable by such occupier bears to the aggregate amount of rent payable in respect of the whole of the said buildings or lands, or to the aggregate amount of the letting value thereof in the authenticated assessment list.

(4) An occupier who makes any payment for which he is not primarily liable under the foregoing provisions shall, in the absence of any contract to the contrary, be entitled to be reimbursed by the person primarily liable.

Scope.—The various sections of the Act make it absolutely clear that it is not the owner of the land who is assessed to house tax and water rate, specially if he has let out the land to other people on building lease. Unless the Act made a special provision for taxing the owner of the land, the house tax and water tax, which are primarily intended to be imposed for building should be levied only against the owner of the building³.

Where a property has been sub-let and the property is in occupation of the sub-lessee and not the sub-lessor or the owner, it is not the sub-lessor, who is liable to pay the taxes. In such a case there is a "inferior lessor, who is none else but the owner"⁴.

150. Liability for payment of other such taxes.—(1) A scavenging tax, or a tax for the cleansing of latrines and privies, on the annual value of buildings or lands or of both, shall be levied from the actual occupier of the property upon which the taxes are assessed.

(2) Provided that, where such property is let to more occupiers than one, the board may at its option levy the tax from the lessor instead of from the actual occupiers.

(3) A lessor from whom a tax is levied under sub-section (2) may, in the absence of a contract to the contrary, recover the tax from any or all of the actual occupiers.

151. Remission by reason of non-occupation.—(1) In a municipality other than one situated wholly or partly in a hilly tract, when a building or land has remained vacant and unproductive of

1. *Ins.* by S. 12 of U. P. Act II of 1919.

2. *Subs.* by the A. O. 1950 for (Crown) which had been *subs.* by the A. O. 1937 for [the Secretary of State in Council].

3. *Cawnpore Municipal Board v. Tirjagi Narain*, 1947 A 82—1946 A W R 522.

4. *The Municipal Board, Mathura v. Dr. Radha Ballabh Pathak*, 1949 A 301.

rent for ninety or more consecutive days during any year, the board shall remit or refund so much of the tax of that year as may be proportionate to the number of days that the said building or land has remained vacant and unproductive of rent.

(2) When in any such municipality a building consists of separate tenements one, or more than one, of which has remained vacant and unproductive of rent for any such period as aforesaid, the board may remit or refund such portion (if any) of the tax or instalment as is prescribed by rule.¹

(3) Provided that no remission shall be granted unless notice in writing of the fact of the building or land being vacant and unproductive of rent has been given to the board; and that no remission or refund shall take effect for any period previous to the day of the delivery of such notice.

(4) The burden of proving the facts entitling a person to relief under this section shall be upon him.

(5) For the purposes of this section a building or land shall not be deemed vacant, if maintained as a pleasure resort or town or country house, or be deemed unproductive of rent, if left to tenant who has a continuing right of occupation thereof, whether he is in actual occupation or not.

'Vacant' and 'unproductive'-Meaning.—The word "vacant" does not mean that the land should be barren and be not covered by trees or vegetation. It is used in the sense of non-occupation. Similarly, the word "unproductive of rent" would not mean a building which is not capable of producing rent. The section therefore means that the building is vacant and unproductive of rent when neither the owner nor his relations or friends occupy it; nor it is let out to any tenant or lessee. But in cases where a compound is a mere appurtenance to a building and while waiting for the building to be rented, the owner maintains the compound and takes its produce, it would not be deemed to be occupied. On the other hand, if he deliberately neglects the house, but prefers to make profits out of the maintenance of the garden in the large compound he shall be deemed to be occupying the land².

Remissions.—The burden of proving that the building remained vacant and unproductive of rent for 90 days consecutively lies on the person who claims remission⁴. However no remissions can be granted unless notice in writing of the fact has been given to the Board⁵.

Notice—Duration.—When a notice has been delivered it remains operative and effective unless the notice is withdrawn or its period is determined by a statement in notice, by act of parties or by operation of statute. Therefore, the notice given would remain effective until a notice of occupation is given under Section 152. It is not necessary to give a notice year after year if the house remains vacant for more than a year⁶.

Suit.—A suit claiming remissions or refund of certain house or water taxes is not barred⁷.

152. Obligation to give notice of re-occupation.—(1) The owner of a building or land for which a remission or refund of the tax has been given under the last preceding section shall give notice of the re-occupation of such building or land within fifteen days of such re-occupation.

(2) Any owner failing to give the notice required by sub-section (1) shall be punished upon conviction with a fine which shall not be

1. See model rule 7 of M. M. of 1932.

3. *U. N. Basu v. Municipal Board, Banaras*, 1934 A 1007=1934 A L J 1067. See also *Municipal Board, Lucknow v. Govt. of U. P.*, 1943 O 58=1942 O W N 567=18 Luck 220.

4. *Municipal Board, Lucknow v. Govt.*

of U. P. 1943 O 58.

5. *Ibid.*

6. *Mst. Prem Wati v. Municipal Board, Agra*, 1942 A 446=1942 A L J 611.

7. *Munna Lal v. Municipal Board, Kanpur*, 1936 A 676.

less than twice the amount of tax payable on such building or land for the period during which it has been re-occupied without notice, and which may extend to fifty rupees or to ten times the amount of the said tax, whichever sum is the greater.

Collection, composition, exemption and other matters relating to taxation

153. Rules as to assessment, collection and other matters.—The following matters shall be regulated and governed by rules¹ except in so far as provision therefor is made by this Act, namely,—

- (a) the assessment, collection or composition of taxes, and, [in the case of octroi or toll, the determination of octroi or toll limit]²
- (b) the prevention of evasion of taxes ;
- (c) the system on which refunds shall be allowed and paid ;
- (d) the fees for notices demanding payments on account of a tax and for the execution of warrants of distress ;
- (e) the rates to be charged for maintaining live-stock distrained ; and
- (f) any other matter relating to taxes in respect of which this Act makes no provision or insufficient provision and provision is, in the opinion of the [State Government]³, necessary.

Toll Barrier.—Where a toll barrier is placed at some distance from the actual limits of the municipality, it is intended that entry into such area as was not covered by the barrier was to be free from the payment of toll and it is only when a toll barrier is crossed that the toll becomes payable⁴.

Note.—Proviso to R. 3 of Sitapur Municipalities Rules under Section 153 explained⁷.

154. Powers to fix octroi limits.—(1) When a cantonment authority with the sanction of the [Central Government]⁴ has agreed with the board of an adjoining municipality that the same octroi [or toll]⁵ limits shall be established for the cantonment and the municipality, and that octroi [or toll]⁶ collections and charges shall be divided between the cantonment fund and the municipal fund, the octroi [or toll]⁸ limits fixed by rules⁹ shall include so much both of the cantonment and of the municipal area as the [State Government]¹⁰ deems necessary.

[(2) The board shall have the same powers of collecting octroi on animals or goods brought within such limits or toll on vehicles and other conveyances, animals, and laden coolies emerging such limits, and

1. For rules under cls. (d) and (e), see notes. No. 1906/XI—6-H., d. July 5, 1916, No. 463/XI—1-H., d. Mar. 8, 1926, and No. 341/XI—1-H., d. Jan. 25, 1917, and p. 472 of M. M. 1952 edition and for rules under other cls. see pp. 483-515 *ibid*.
2. Subs. for "in the case of octroi, the determination of octroi limits" by S. 2 of U. P. Act VI of 1922.
3. Subs. by the A. O. 1950 for (Provl. Govt.) which had been subs. by the A. O. 1937 for [L. G.].
4. Subs. for [G. G. in C.] by A. O. 1937.
5. Ins. by S. 3 (1) of U. P. Act VI of

- 1922.
- See footnotes under S. 127 and model rules on pp. 367—400 of M. M.
6. *Municipal Board, Bahraich v. Ram Lal*, 1947 O W N 520=1947 O A 354 (C. C.)
7. *D. B. C. Mudge v. Municipal Board, Sitapur*, 1937 O 468=1937 O W N 926.
8. Ins. by S. 3 (1) of U. P. Act VI of 1922.
9. See footnote (1) under S. 153.
10. Subs. by the A. O. 1950 for [Provl. Govt.] which had been subs. by the A. O. 1937 for [L. G.].

the provisions of this Act relating to octroi and toll shall apply in the same way as if such limits were wholly within the municipality.]¹

155. Penalty for evasion of octroi dues.—A person introducing or attempting to introduce within octroi limits, or abetting the introduction within octroi limits, of any goods or animals liable to the payment of octroi for which the octroi due on introduction has neither been paid nor tendered, shall be punished with a fine which may extend either to ten times the value of such octroi or to fifty rupees, whichever is greater and which shall not be less than [four times]², the value of such octroi.

Scope.—This section is a penal enactment and has to be construed strictly against the prosecution. The significance of the words "introducing" and "brought in" is that the animals or goods must be imported from outside the municipal limits altogether³. At the same time, if animals are introduced into or brought within municipal limits, the burden of showing that they have come from the limits of the municipality, is on the accused⁴. In case of offences falling under Section 155 and R. 144 (2), in the absence of any cause necessitating immediate action the ordinary procedure is to send a notice to the defaulter calling upon him to present himself and make the necessary payment within a specified time, and it is only when he deliberately defaults that the prosecution should be launched⁵. When the proprietor of a shop was not only aware of the circumstances in which the goods came to his shop, but he deliberately used ways and means to evade the payment of duty, he was liable to be convicted⁶.

If there is circumstantial evidence which points to one and only one conclusion that it was the accused and no one else to whose interest it was to introduce the goods into the municipal limits without payment of octroi duty, the accused must be held to be liable under the section⁷.

Offence—Essence.—In a case under this section the complainant must satisfy the Criminal Court that the accused has introduced or attempted to introduce or abetted the introduction of any goods or animals "liable to the payment of octroi." No offence is committed if goods, which under the Act, are exempted from liability, are imported⁸. An intention to evade the payment of duty is not essential under this section⁹. The broker of a consignee taking delivery of the goods without paying octroi duty is guilty of an offence under this section¹⁰.

Abetment.—This section does not enact a rule which is sufficiently comprehensive to justify the conviction of the proprietor as such of the firm to which dutiable articles are consigned unless it is shown by evidence that he himself introduced or did some act amounting to abetment of introduction of dutiable goods¹¹.

Parts of Car-Exemption.—Parts of the car which are set in motion by power must be parts of the machinery, and so would be other indispensable, essential and component parts of the machinery. Tubes and tyres which are specially designed for motor cars only, and are not meant for anything else which is not machinery, are exempt from the payment of octroi¹².

Accused-Plea Open.—The plea that the goods are not liable to payment of duty is open to an accused¹³.

1. Subs. by S. 3 (2) of U. P. Act VI of 1922.
2. Subs. for [twice] by S. 69 of U. P. Act VII of 1949.
3. *Raj Narain Verma v. Emperor*, 1934 A 318; *Ajmeri Sheikh v. Emperor*, 1934 A 39.
4. *Ajmeri Sheikh v. Emperor*, 1934 A 39=1934 A L J 80.
5. *Krishna Kumar v. Emperor*, 1946 O 13.
6. *Emperor v. Gopal Krishna*, 1944 O 210=1944 O W N 62=45 Cr L J 466.
7. *S. Gurnam Singh v. State*, 1953 A 539.
8. *Kashi Prasad Verma v. Municipal*

- Board, Banaras*, 1935 A 28.
9. *Nanhey Mal Narotam Das v. Emperor*, 1947 O W N 517 *Krishna Kumar v. Emperor*, 1946 O 13. But see *Ganesh Lal v. Emperor*, 1945 O 121=1944 O W N 482; *Municipal Board, Rae Bareilly v. Mahomed Mugim*, 6 O L J 174=20 Cr L J 493.
10. *Babu Ram v. Emperor*, 16 A L J 632.
11. *Emperor v. Ram Narain Saraswati*, 1936 A 88=1936 A L J 191=37 Cr L J 358.
12. *Kashi Prasad Verma v. Municipal Board, Banaras*, 1935 A 28=57 A 648.
13. *Ibid.*

156. Composition.—(1) Subject to the provisions of any rule¹, a board may by a special resolution confirmed by the [Prescribed Authority]², provide that all or any persons may be allowed to compound for a tax.

(2) Every sum due by reason of the composition of a tax under sub-section (1) shall be recoverable in the manner provided by Chapter VI.

157. Exemption.—(1) A board may exempt, for a period not exceeding one year, from the payment of a tax, or any portion of a tax, imposed under this Act any person who is in its opinion, by reason of poverty, unable to pay the same, and may renew such exemption as often as it deems necessary.

(2) A board may, by a special resolution confirmed [by the [Prescribed Authority]³ exempt from the payment of a tax, or any portion of a tax, imposed under this Act any person or class of persons or any property or description of property.

(3) The [State Government]⁴ may, by order, exempt from the payment of a tax, or any portion of a tax, imposed under this Act any person or class of persons or any property or description of property.

158. Obligation to disclose liability.—(1) The board may by written communication call upon an inhabitant of the municipality to furnish such information as may be necessary in order to ascertain—

(a) whether such inhabitant is liable to pay a tax imposed under this Act ;

(b) at what amount he should be assessed ;

(c) the annual value of the building or land which he occupies and the name and address of the owner.

(2) If an inhabitant so called upon to furnish information omits to furnish it or furnishes information which is untrue, he shall be liable upon conviction to a fine which may extend to [five hundred rupees]⁵.

Scope.—Under this section evidence is called for merely for the purpose of investigating the matter and the person against whom notice is issued is not an accused person at that stage. In order to demand compliance with notice under Section 158 (1) (b) the question of liability to pay would not arise at all. It is enough if the duty is required to be assessed, as it would be necessary for the Board to assess the amount for the purpose of enabling the court to determine the amount of fine for which he would be liable. If goods are imported within municipal limits, a liability to pay the octroi duty would be established, which can only be discharged either by payment of the said amount or by some other method provided by law⁶.

159. Powers of discovery.—Subject to the conditions and restrictions specified in sub-section (2) of Section 287, the [President]⁷, the Executive Officer and, if authorised in this behalf by resolution, any other member, officer, or servant of the board may enter, inspect and measure a building for the purposes of valuation, or enter and inspect a stable, coach house or other place wherein there is reason to believe that there is a vehicle or animal liable to taxation under this Act.

Appeals against taxation

160. Appeals relating to taxation.—(1) In the case of a tax

1. See not. No. 19c 6/XI—6-H., d. July, 5, 1916, and pp. 306-307 of M. M. 195a Edition.

2. Subs. for [Commissioner] by S. 60 of U. P. Act VII of 1949.

3. Subs. for [Commissioner] by S. 60 of *ibid* which had been subs. for [by the L. G. in the case of cities and by the Commissioner in other cases]

by S. 13 of U. P. Act II of 1919.

4. Subs. by the A. O. 1950 for [Prov. Govt.] which had been subs. by the A. O. 1937 for [L. G.].

5. Subs. for [one hundred rupees] by S. 70 of U. P. Act VII of 1949.

6. *Municipal Board, Hardoi v. State*, 1955 A 109.

7. Subs. for [Chairman] by S. 61 of *ibid*.

assessed upon the annual value of buildings or land or both an appeal against an order passed under sub-section (3) of Section 143 or under sub-section (3) of Section 147, and, in the case of any other tax, an appeal against an assessment, or any alteration of an assessment, may be made to the District Magistrate or to such other officer as may be empowered by the [State Government]⁷ in this behalf.

⁸[Provided that where a board has been superseded under Section 30 and the District Magistrate has been appointed under clause (b) of Section 31 to exercise and perform the powers and duties of the board, the appeal shall lie to such authority as may be prescribed].

Scope.—This section provides for appeals against an order passed under sub-section (3) of Section 143 or under sub-section (3) of Section 147 and in the case of any other tax. "Any other tax" includes "Octroi"¹, and a licence fee on carts².

Civil Court—Jurisdiction.—The order imposing a tax in the shape of a licence fee cannot be challenged in Civil Courts³, but a suit for a declaration and for an injunction restraining the Board from taking proceedings of attachment or sale is cognizable, if it relates to taxes other than those mentioned in Chapter V *e.g.* fees charged in respect of projections over streets or drains⁴. But if the tax imposed is on circumstances and property and is illegal or beyond the jurisdiction of Municipal Board, the Civil Court has no jurisdiction to restrain the municipality by an injunction from attaching property for realisation of the said tax⁵.

Revision.—The decision of a District Magistrate under this section is not revisable⁶.

District Magistrate.—These words are not defined in the Act or in the U. P. General Clauses Act, and therefore they must mean the person appointed as District Magistrate under Section 10 of Code of Criminal Procedure. It includes an Additional District Magistrate also, and he can hear appeals under this section, instituted in his court, but without any statutory provisions, the District Magistrate cannot transfer the appeal to an Additional District Magistrate^{6(a)}.

Writ.—The power of superintendence given under the Constitution of India is limited in its character, and is exercised when there is refusal to exercise a jurisdiction, or when there is an exercise of jurisdiction which is not vested, or to correct some error apparent on the face of record which may arise from some defect or informality in the proceedings. The power is not exercised to correct mere errors of law or of facts ^{6(b)}. If the applicant for writ had got a remedy by way of appeal, but makes no attempt to avail himself of this remedy and there is nothing to show that such remedy would not be equally beneficial, convenient and effective no relief under Article 226 of the Constitution of India can be given^{6(c)}.

161. Limitation and preliminary deposit of tax claimed.—

No such appeal shall be heard and determined unless—

- (a) the appeal is, in the case of a tax assessed on the annual value of buildings or lands or both, brought within thirty days next after the date of communication of the order (exclusive of the time requisite for obtaining a copy thereof) and, in the case of any other tax, within thirty days next after the date of the receipt of the notice of assessment or of alteration of assessment or, if no notice has been given,

- Munna Lal and Sons v. Chairman Municipal Board*, 1935 A 153=57 A 655, *Municipal Board, Lucknow v. Dyer Meakin*, 1947 O 218=1947 O W N 302.
Municipal Board, Saharanpur v. Jagdish Saran, 1939 A 519=1939 A L J 339.
Ibid.
Jagannath v. Municipal Board, Saran, 1939 A 337=1939 A L J 168.
Devi Prasad v. Municipal Board, Kanauj, 1949 A 741=1949 A L J 208 (F. B.).
 6. *Municipal Board, Banaras v. Ram Sahai Gupta*, 1933 A 281=1939 A L J

469.
 6a. *State of Uttar Pradesh v. Ratan Shukla*, 1956 A 258. In this case the view taken in *Kedar Nath v. Moolchand*, 1953 A 62 was dissented.
 6b. *Municipal Board, Allahabad v. District Judge, Allahabad*, 1952 A 505.
 6c. *Ramman Lal v. The Superintendent Octroi, Municipal Board, Allahabad*, 1951 A W R 552.
 7. Subs. by the A. O. 1950 for [Provl. Govt.] which had been subs. by the A. O. 1950 for [L. G.]
 8. Subs. by U. P. Act VII of 1953.

within thirty days next after the date of the first demand under the assessment or alteration of assessment; and

- (b) the amount claimed from the appellant has been deposited by him in the municipal office.

162. Reference to High Court.—(1) If, during the hearing of an appeal under Section 160, a question as to the liability to, or the principle of assessment of, a tax arises on which the officer hearing the appeal entertains reasonable doubt, he may, either of his own motion or on the application of a person interested, draw up a statement of the facts of the case and the point on which doubt is entertained and refer the statement with his own opinion on the point for the decision of the High Court.

(2) On reference being made under sub-section (1), the subsequent proceedings in the case shall be, as nearly as may be, in conformity with the rules relating to references to the High Court contained in Order XLVI of the first schedule of the Code of Civil Procedure, 1908, or such other rules as are made by the High Court under Section 122 of that Code.

Scope.—A reference to High Court in case of doubt can only be made during the hearing of an appeal under Section 160. This reference cannot be made during the hearing of an application for review¹.

163. Costs.—(1) In every appeal the costs shall be in the discretion of the officer deciding the appeal.

(2) Costs awarded under this section to the board shall be recoverable by the board in the manner provided by Chapter VI.

(3) If the board fail to pay costs awarded to an appellant within ten days after the date of the communication to the board of the order for payment thereof, the officer awarding the costs may order the persons having the custody of the balance of the municipal fund to pay the amount.

164. Bar to jurisdiction of civil and criminal courts in matters of taxation.—(1) No objection shall be taken to a valuation or assessment nor shall the liability of a person to be assessed or taxed be questioned in any other manner or by any other authority than is provided in this Act.

(2) The order of the appellate authority confirming, setting aside or modifying an order in respect of valuation or assessment or liability to assessment or taxation shall be final: provided that it shall be lawful for the appellate authority, upon application or his own motion, to review any order passed by him in appeal by a further order passed within three months from the date of his original order.

Assessment—Meaning.—The word "assessment" in this section means assessment in accordance with the provisions of Sections 142, 143 and 144.²

Civil Court Jurisdiction.—A Civil suit in matters in which an appeal is provided under this section is barred. But if the municipality acts in violation of the provisions of the Act, a suit for refund and damages would lie; e. g. plaintiffs house though outside a radius of 600 feet from the nearest stand-pipe and having no water-pipe connection was assessed to water-tax, and his name included in the list; the municipality attached the property and he had to pay a certain sum. It was held that a suit for declaration that the house was not liable to assessment for the refund of the sum and for damages was maintainable³. Similarly, the municipal committee is not entitled to

1. *Municipal Board, Unao v. Yagduti*, 1940 O 432=1940 O W N 653; *Chaukmal Ram Chandra v. Notified Area Bargaon*, 1940 O 400=O W N 503; *Municipal Board, Jhansi v. Mansukh Das Sitaram*, 1949 A 331=A W R 29.

2. *Municipal Board, Banaras v. Jokhum*, 1939 A 394=1939 A L J 183.

3. *Municipal Board, Banaras v. Jokhum*, 1939 A 394=1939 A L J 183. See also *Municipal Board, Mannath Bhanjan v. Raghunath Prasad*, 1954 A 121.

charge a person with licence fee in respect of Thelas which are not plying for hire nor are kept within the municipality, and a suit for the refund of the fee so paid can be entertained by a Civil Court¹. A person entitled to refund of octroi duty under the statutory duty conferred upon him by the Municipal Accounts Code can claim it in a Civil Court². However a suit against the assessment of octroi duty is not maintainable as the remedy is by way of appeal³.

Defence.—In a case when a person is prosecuted for failure to pay octroi duty assessed he can take up the defence that the assessment was ultra vires and void⁴.

Review and Reference.—The order in appeal is final, unless substituted by another on review; mere application for review does not re-open the appeal⁵. The order on review contemplated by the section clearly means an order which can be substituted in place of the original order and not any other order whatsoever and the appellate authority has no jurisdiction to pass on review an order making a reference to the High Court⁶; a reference can only be made during hearing of appeal⁷.

Formal defects in assessments and demands

165. Savings.—No assessment list or other list, notice, bill or other such document specifying, or purporting to specify, with reference to any tax, charge, rent or fee, any person, property, thing or circumstances shall be invalid by reason only of a mistake in the name, residence, place of business or occupation of the person, or in the description of the property, thing or circumstance, or by reason of any mere clerical error or defect of form, and it shall be sufficient that the person, property, thing or circumstance is described sufficiently for the purpose of identification and it shall not be necessary to name the owner or occupier of any property liable in respect of a tax.

CHAPTER VI

RECOVERY OF CERTAIN MUNICIPAL CLAIMS

166. Presentation of bill.—(1) As soon as a person becomes liable for the payment of—

- (a) any sum on account of a tax, other than an octroi or toll or any similar tax payable upon immediate demand, or
- (b) any sum payable under clause (c) of Section 196 or Section 229 or Section 230 in respect of the supply of water, or payable in respect of any other municipal service or undertaking, or
- (c) any other sum declared by this Act or by rule⁸ [or by-law]⁹, to be recoverable in the manner provided by this chapter, the board shall, with all convenient speed, cause a bill to be presented to the persons so liable.

(2) Unless otherwise provided by rule, a person shall be deemed to become liable for the payment of every tax and licence fee upon the commencement of the period in respect of which such tax or fee is payable.

1. *Jaswant Singh v. Executive Officer, Meerut*, 1940 A 346=1940 A L J 330.
2. *Municipal Board, Jaunpur v. Banwari Lal*, 1939 A 623=1939 A L J 897.
3. *Municipal Board, Banaras v. Krishna and Co.*, 1939 A 760=1939 A L J 833; *Munna Lal and Sons v. Municipal Board*, 1935 A 153.
4. *Ran, through Municipal Board, Lalitpur v. Uttam Chand*, 1950 A 541.
5. *Chhokmal Ram Chandra v. Notified Area, Bargaon*, 1940 O 400=1940

OWN 503.

6. *Municipal Board, Unnao v. Yagduti*, 1940 O 432=1940 OWN 632; *Chhokmal Ram Chandra v. Notified Area, Bargaon*, 1940 O 400.
7. *Chhokmal Ram Chandra v. Notified Area, Bargaon*, 1940 O 400.
8. See not No. 1906/XI—6-H, d. July, 5, 1916, and p. 388 of M. M. 1932 edition.
9. Ins. by S. 71 of U. P. Act VII of 1949.

Bill and Liability.—A bill under this section is to be presented by the Board to the person entered in assessment register as owner and not to all the owners of the buildings, as it is not the duty of the Board to ascertain all the owners; it is for the owners to get their names entered in the register¹. But the liability to pay the municipal tax does not depend on the presentation of the bill; it arises the moment, the tax is assessed, and the money becomes payable on the date, the municipality declares by their rules that the tax is payable².

167. Contents of bill.—Every such bill shall specify—

- (a) the period for which and the property, occupation, circumstances or thing in respect of which the sum is claimed, and
- (b) the liability or penalty enforceable in default of payment, and
- (c) the time (if any) within which an appeal may be referred or provided in Section 161.

168. Notice of demand.—If the sum for which a bill has been presented as aforesaid is not paid into the municipal office, or to a person empowered by a regulation to receive such payments, within fifteen days from the presentation thereof, the board may cause to be served upon the person liable for the payment of the said sum a notice of demand in the form set forth in Schedule IV, or to the like effect.

Note.—Sections 166 to 168 give the preliminaries for the issue of a warrant under Section 169.³ The notice of demand shall be issued against the same person, to whom the bill under Section 166 has been sent.

169. Issue of warrant.—(1) If the person liable for the payment of the said sum does not, within fifteen days from the service of such notice of demand, either—

- (a) pay the sum demanded in the notice, or
- (b) show cause to the satisfaction of the board or of such officer as the board by regulation may appoint in this behalf, or, where there is an Executive Officer, of the Executive Officer, as the case may be, why he should not pay the same,

such sum with all costs of the recovery may be recovered under a warrant caused to be issued by the board in the form of Schedule V, or to the like effect, by distress and sale of the movable property of the defaulter.

(2) Every warrant issued under this section shall be signed by the [President]⁴ of the board, or by an officer to whom the board has delegated its power by regulation or by the Executive Officer, if any.

Note.—A bill of demand under Section 166 and a notice of demand under Section 168 signed by the Superintendent are invalid. A warrant under Section 169 was signed by the Chairman, but there was no proof that he was also authorised to issue warrant on his own initiative, it was held that the warrant was of doubtful legality⁵.

Civil Court-Jurisdiction.—The Civil Court has jurisdiction to consider the validity of the action taken by the Municipal Board under this section, and when it is found that the Board is realising or has realised amounts which were not realisable by it, an order for injunction or for the refund of money can be passed⁶.

170. Forcible entry for purpose of executing warrant.—

(1) It shall be lawful for a municipal officer to whom a warrant issued under Section 169 is addressed, to break open, at any time between sunrise and sunset, any outer or inner door or window of a building, in

1. *Mst. Badrunnissa v. Municipal Board, Agra*, 1941 A 153=1941 A L J 21.
 2. *Ibid.*
 3. 1939 A W R 261 (H. C.)
 4. *Subs. for [Chairman]* by S. 61 of

U. P. Act VII of 1949.
 5. *Chhotelal v. Emperor*, 1936 A 74=1936 A L J 427=37 Cr L J 282.
 6. *Municipal Board Mathura v. Mansa*, 1951 A 634.

order to make the distress directed in the warrant in the following circumstances and not otherwise—

- (a) if the warrant contains a special order authorizing him in this behalf, and
- (b) if he has reasonable grounds for believing that the building contains property which is liable to seizure under the warrant, and
- (c) if, after notifying his authority and purpose and duly demanding admittance, he cannot otherwise obtain admittance.

(2) Provided that such officer shall not enter or break open the door of an apartment appropriated for women, until he has given any women therein an opportunity to withdraw.

171. Manner of executing warrant.—(1) It shall also be lawful for such officer to distrain, wherever it may be found, any movable property of the person therein named as defaulter, subject to the provisions of sub-sections (2) and (3).

(2) The following property shall not be distrained—

- (a) the necessary wearing apparel and bedding of the defaulter, his wife and children,
- (b) the tools of artisans,
- (c) books of account,
- (d) when the defaulter is an agriculturist, his implements of husbandry, seed-grains, and such cattle as may be necessary to enable him to earn his livelihood.

(3) The distress shall not be excessive, that is to say, the property distrained shall be as nearly as possible equal in value to the amount recoverable under the warrant, and if any articles have been distrained which, in the opinion of a person authorized by or under sub-section (2) of Section 169 to sign a warrant, should not have been so distrained, they shall forthwith be returned.

(4) The officer shall on seizing the property, forthwith make an inventory thereof, and shall before removing the same give to the person in possession thereof at the time of seizure a written notice in the form of Schedule VI that the said property will be sold as shall be specified in such notice.

172. Sale of goods under warrant, and application of proceeds.—(1) When the property seized is subject to speedy and natural decay, or when the expense of keeping it in custody together with the amount to be recovered is likely to exceed its value, the [President]¹, or other officer by whom the warrant was signed, shall at once give notice to the person in whose possession the property was seized to the effect that it will be sold at once, and shall sell it accordingly unless the amount named in the warrant be forthwith paid.

(2) If not sold at once under sub-section (1) the property seized or a sufficient portion thereof may, on the expiration of the time specified in the notice served by the officer executing the warrant, be sold by public auction under the orders of the board, unless the warrant is suspended by the person who signed it or the sum due from the defaulter is paid together with all costs incidental to the notice, warrant and distress and detention of the property.

1. Subs. for [Chairman] by S. 61 of U. P. Act VII of 1949.

(3) The surplus, if any, shall be forthwith credited to the municipal fund, notice of such credit being given at the same time to the person from whose possession the property was taken; but if the same be claimed by written application to the board within one year from the date of the notice, a refund thereof shall be made to such person. Any sum not claimed within one year from the date of such notice shall be the property of the board.

173. Procedure in case of execution against property outside municipality.—(1) If no sufficient movable property belonging to a defaulter, or being upon the premises in respect of which he is assessed, can be found within the municipality, the District Magistrate may, on the application of the board, issue his warrant to an officer of his court—

- (a) for the distress and sale of any movable property or effects belonging to the defaulter within any other part of the jurisdiction of the magistrate, or
- (b) for the distress and sale of any movable property belonging to the defaulter within the jurisdiction of any other magistrate exercising jurisdiction within [Uttar Pradesh]¹

(2) In the case of action being taken under clause (b) of sub-section (1), the other magistrate shall endorse the warrant so issued, and cause it to be executed, and any amount recovered to be remitted to the magistrate issuing the warrant, who shall remit the same to the board.

174. Fees and costs.—Fees for—

- (a) every notice issued under Section 168,
- (b) every distress made under Section 171, and
- (c) the costs of maintaining any live-stock seized under the said section.

shall be chargeable at the rates respectively specified in such behalf in rules² made by the [State Government]³, and shall be included in the costs of recovery to be levied under Section 169.

175. Savings.—No distress or sale made under this Act shall be deemed unlawful, nor shall any person making the same be deemed a trespasser, on account of an error, defect or want of form in the bill, notice, warrant of distress, inventory or other proceeding relating thereto.

Scope.—It is not open to the defaulter to plead that the distress was unlawful, but the same cannot be said about an stranger, and the section does not entitle the Board to say that it is not open to a stranger to allege that the warrant was unlawful⁴.

176. Alternative power of bringing suit.—Instead of proceeding by distress and sale, or in case of failure to realize thereby the

1. *Subs.* by A. O. 1950 for [the United Provinces].

2. *See* nots. no. 1906/XI—6-H. d. July 5, 1916, no. 341/XI—I-H, d. Jan. 25, 1917, and no. 643/XI—I-H, d. Mar. 8, 1926, and pp. 471-472, of

M. M. 1952 edition.

3. *Subs.* by the A. O. 1950 for (Provl. Govt.) which had been *subs.* by the A. O. 1937 for (L. G.).

4. *Municipal Board, of Mainpuri v. Ajudhia Prasad*, 1935 A 51.

whole or any part of the demand, the board may sue the person liable to pay the same in any court of competent jurisdiction.

177. Liability of immovable property for taxes.—All sums due on account of a tax imposed on the annual value of building or lands or of both shall, subject to the prior payment of the land revenue (if any) due to [Government]¹ thereupon, be a first charge upon such buildings or lands.

Charge-Effect.—The charge contemplated by this section comes within the saving clause of para 2 of Section 100, Transfer of Property Act and would remain unaffected by the equitable rule which follows the saving clause. It would cease to be first charge if any title arising by survivorship or by succession or by inheritance or by transfer could defeat it². Municipal Board can follow the property in the hands of the auction purchaser³. Intending purchaser is not bound to presume that the taxes have been paid, and he must make proper inquiry, otherwise constructive notice would be imputed to him⁴.

CHAPTER VII

Powers and Penalties in respect of Buildings, Public Drains, Streets, Extinction of Fires, Scavenging and Water Supply.

Building Regulations

178. Notice of intention to erect building or make well.—

(1) Before beginning, within the limits of the municipality,—

- (a) to erect a new building or new part of a building, or
- (b) to re-erect or make a material alteration in a building, or
- (c) to make or enlarge a well,

a person shall give notice of his intention to the board.

(2) The notice referred to in sub-section (1) as required in the case of a building shall only be necessary where the building abuts on, or is adjacent to, a public street or place, or property vested in [Government]¹ or in the board, unless, by a by-law applicable to the area in which the building is situated, the necessity of giving notice is extended to all buildings.

(3) An alteration in a building shall, for the purposes of this chapter and of any by-law, be deemed to be material if—

- (a) it affects or is likely to affect prejudicially the stability or safety of the building or the condition of the building in respect of drainage, ventilation, sanitation or hygiene, or
- (b) it increases or diminishes the height of, area covered by or cubical capacity of the building or reduces the cubical capacity of any room in the building below the minimum prescribed in any by law, or
- (c) it converts into a place for human habitation a building or part of a building originally constructed for other purposes, or

1. Subs. by the A. O. 1950 for [His Majesty].

2. *Nawal Kishore v. Municipal Board, Agra*, 1943 A 115=1943 A LJ 53 (F. B.).

3. *Municipal Board, Lucknow v. Ramji*

Lal 1941 O 305=1941 O WN 122.

4. *Ibid.* See also 1943 AWR 33 (F. B.) But see *Ramji Lal v. Municipal Board, Lucknow*, 1937 O 31.

- (d) it is an alteration declared by a by-law made in this behalf to be material alteration.

Scope.—A building the walls of which are forty feet from the road cannot be said to be abutting on or adjacent to a public road or street. The mere fact that the proposed compound wall would if constructed abut on public road does not require a notice under this section to the Board¹. Where a notice under this section has been given but the Board neglects or omits to make an order under Section 180 (1), the applicant must call the attention of the Board under Section 180 (3) before erecting the building. An intimation that he has already erected the building in anticipation of the Boards' sanction cannot be regarded as an application under Section 180². Whether the opening of a door way upon a common courtyard is or is not a material alteration within the meaning of this section is a question of fact, but this is a matter with which the Board is not concerned as it is not part of the duty of a municipality to decide private disputes between citizens³. For the meaning of alteration in a building see the cases mentioned in footnote⁴.

A chabutra cannot be considered to be a building or part of a building so as to come under Section 2 (2) or 2 (14) and if a person makes alterations in the chabutra without giving the requisite notice, he is not liable for punishment⁵. The section, however would apply, even if the constructions or alterations are not made in the ground floor, but in the upper storey⁶.

179. Plans and specifications required to validate notice.

—(1) Where a by-law has been made prescribing and requiring any information and plans in addition to a notice, no notice under Section 178 shall be considered to be valid until the information, if any, required by such bye-law has been furnished to the satisfaction of the board.

(2) In any other case, the board may, within one week of the receipt of the notice required by Section 178 require a person who has given such notice to furnish a plan and specification of any existing or proposed building, or part of a building, or well together, with a site plan of the land, with such reasonable details as the board may prescribe in its requisition and, in such case, the notice shall not be considered to be valid until such plans and specification have been furnished to the satisfaction of the board.

180. Sanction of work by board.—(1) Subject to the provisions of any bye-law, the board may either refuse to sanction any work of which notice has been given under Section 178 or may sanction it absolutely or subject to—

(a) any written directions that the board deems fit to issue in respect of all or any of the matters mentioned in sub-head (h) of heading A of Section 298, or

(b) a written direction requiring the setback of the building or part of a building to the regular line of the street prescribed under Section 222, or, in default of any regular line prescribed under that section, to the line of frontage of any neighbouring building or buildings.

(2) In the case of a refusal to sanction under sub-section (1), the board shall communicate in writing the reasons for such refusal to the person giving notice under Section 178.

(3) Should the board neglect or omit for one month after the

1. *Mohammad Raza v. Emperor*, 8 O L J 603=23 Cr L J 1913.

2. *Municipal Board, Balwaich v. Jwala Prasad*, 1935 O 197=11 O W N 1622.

3. *Joti Prasad v. Emperor*, 1937 A 361.

4. 1923 O 35, 1930 A 560; 1924 A 207; 1929 A 756; 1926 A 122.

5. *Malhoo Mian Abdul Ghani v. State*, 1953 A 548.

6. *Shrimati Champa Kuar v. The State*, 1956 A W R 108 (H. C.)

receipt of a valid notice under Section 178 to make and deliver to the person who has given such notice an order of the nature specified in sub-section (1) in respect thereof, such person may by a written communication call the attention of the board to the omission or neglect, and, if such omission or neglect continues for a further period of fifteen days, the board shall be deemed to have sanctioned the proposed work absolutely :

Provided that nothing in sub-section (3) shall be construed to authorize any person to act in contravention of this Act or of any bye-law.

[(5) No person shall commence any work of which notice has been given under Section 178 until sanction has been given or deemed to have been given under this section.^{1]}

Scope.—The Board cannot refuse sanction to a proposed construction or work except upon grounds of public health, safety, or convenience or matters mentioned in Sections 7 and 8 of the Act. It has nothing to do with private disputes or maintenance of law or order². It cannot refuse sanction on the ground that the construction would interfere with the rights of light and air of some party³. The intention of the Legislature is not to arm the Board with any power to investigate into the rights of individuals and to unduly encroach upon those rights except upon the grounds of public health, public safety or public convenience⁴. The sanction once given cannot be revoked or modified⁵. A chairman can give a general sanction for construction, but if the case is covered by Section 209, sanction of Executive Officer is necessary⁶.

The Municipal Board cannot however dispense with bye-laws framed and sanction plans not in accordance with these bye-laws. Sanction so accorded would be invalid⁷. This section governs the powers of the Improvement Trust in so far as it is not inconsistent with the provisions of the Town Improvement Act, 1919. Any provision in the Municipalities Act which would limit the power of the Improvement Trust Act, would therefore be inconsistent and consequently inapplicable⁸.

Implied Sanction.—Section 180 (1) provides that the Board may either refuse to sanction any work of which notice has been given under Section 178 or may sanction it absolutely or subject to certain directions. The legal consequence of the Board's failure to pass definite orders is that the Board shall be deemed to have sanctioned the proposed work⁹. But in order to get the advantage of sub-section (3) an applicant must first make a valid application to Board ; secondly, he must wait for the expiry of a period of one month and thereafter he must make a written communication drawing the attention of the Board to the omission or neglect to pass an order and there he must wait for a further period of 15 days¹⁰. In view of Section 180 (4) a person cannot be deemed to have been given sanction for a construction if it is in contravention of any bye-law¹¹. However where the Board is deemed to have given sanction it has no right to issue notice under Section 186, and on disobedience of that notice no offence under Section 307 (b) is committed, it being immaterial that no appeal under Section 318 was filed against the notice¹². No constructions shall be commenced unless sanction given or deemed to have been given, if notice under Section 178 is given¹³. No application to Notified Area¹³.

1. Add. by S. 14 of U. P. Act II of 1919.

2. *Mahadeo Prasad v. U. P. Government*, 1949 A 56=1948 A L J 543.

3. *Municipal Board, Meerut v. Mah mmad Zaki*, 1945 A 393=1945 A L J 504.

4. *Abdul Qayyum Khan v. City Board Musoorie*, 1931 A 147=1931 A L J 206=53 A 500.

5. *Nanak Prasad v. Municipal Board, Rae Bareilly*, 1943 O 292.

6. *Bajjnath Ram v. Emperor*, 1936 A 56=1935 A L J 1260=58 A 480.

7. *Matval Chand v. District Magistrate, Budaun*, 1953 A 681.

8. *Vibhuti Narain Singh v. Improvement Trust, Banaras*, 1954 A 520.

9. *Nasiruddin v. Emperor*, 1943 A 47=1942 A L J 668.

10. *B. V. Narain Das v. Municipal Board, Gorakhpur*, 1936 A 441=161 I C 443.

11. *Tusuf Husain v. Emperor*, 1932 O 306=9 O W N 870=140 I C 185.

12. *Emperor v. Parshotam Kandu*, 1935 A 986=1935 A L J 1101=159 I C 513.

13. *Emperor v. Bafatan*, 1933 A 617=1933 A L J 105=55 A 843.

Damages.—Where the plaintiff is aware of his legal rights under Section 180 (3), but sought to place upon the municipality the duty which was not imputable to it, of acknowledging the plaintiff's right to proceed with his constructions in view of Section 180 (3), the failure of the plaintiff to proceed with his construction is not the result of his receiving a prohibition, but only a warning that he would be responsible for the consequences of his action, and as such the law does not give the plaintiff a cause of action for damages¹.

Civil Court.—Where the Board refuses permission to build on the ground that the property belonged to the Board, the Board could not be deemed to have acted under Section 180 and a civil suit by the applicant was not barred².

Street-Portico.—The Municipal Board is empowered to grant permission for the erection of a portico before a shop in a street³.

180-A. Restriction on the power of a board to sanction construction of a place of entertainment in certain cases.—⁴[Notwithstanding anything contained in this Act, or any bye-law made thereunder, the construction of, or any addition to, any building of public entertainment or any addition thereto, shall not, except with the previous approval of the State Government, be sanctioned by a board, if the site of, or proposed for such building is—

- (a) within a radius of one furlong from—
 - (i) any residential institution attached to recognized educational institution such as a college, a high school or girls school; or
 - (ii) a public hospital with a large indoor patient ward; or
 - (iii) an orphanage containing one hundred or more inmates, or
- (b) in any thickly populated residential area which is either exclusively residential or reserved or used generally for residential as distinguished from business; or
- (c) in any area reserved for residential purposes by any housing or planning scheme or otherwise under any enactment.]

181. Duration of sanction.—(1) A sanction given or deemed to have been given by a board under [Section 180]⁵ shall be available for one year or for such lesser period as may be prescribed by bye-law.

(2) After the expiry of the said period the proposed work may not be commenced except in pursuance of a fresh sanction applied for and granted under the [same]⁶ sections.

182. Inspection of works requiring sanction.—The [President]⁷, the Executive Officer and, if authorized in this behalf by resolution, any other member, officer or servant of the board may at any time and without warning inspect any work in respect of which notice is required under Section 178—

- (a) while under construction, or
- (b) within one month of the receipt of a report that it has been completed or, in default of such report, at any time after completion.

183. Compensation for damage sustained through order passed under Section 180.—Notwithstanding anything contained in

1. *Banwari Lal v. Municipal Board, Lucknow*, 1941 O 572=1941 O W N 864.
 2. *Municipal Board, Etawah v. Mst. Ram Sri*, 1931 A 670=33 I C 26.
 3. *Argun v. Man Singh of Sewai*, 1934 A

338=1934 A L J 418=56 A 574.
 4. *Subs.* by U. P. Act VII of 1953.
 5. *Subs.* by U. P. Act I of 1955.
 6. *ibid.*
 7. *Subs.* for [Chairman] by S. 61 of U. P. Act VII of 1949.

Section 125, a person giving notice under Section 178 shall not be entitled to any compensation for damage or loss sustained by reason of an order passed by a board under Section 180, unless—

- (a) the order is passed on some ground other than that the proposed work would contravene a bye-law or be prejudicial to the health or safety of the public or any person, or
- (b) the order contains a direction of the nature specified in clause (b) of sub-section (1) of Section 180, or
- (c) the order is an order of refusal to sanction the re-erection of a building on the ground that it is unsuitable in plan or design to the locality, or is intended for a purpose unsuitable to the locality, or contravenes a bye-law under sub-head (f) of heading A of Section 298.

184. Effect of sanction under Section 180.—(1) A sanction given or deemed to have been given under Section 180 shall not, beyond exempting the person to whom the sanction is given or deemed to have been given from any penalty or consequence to which he would otherwise be liable under Section 185, 186 or 222, confer or extinguish any right or disability, or operate as an estoppel or admission, or affect any title to property or have any other legal effect whatsoever.

(2) In particular such sanction shall not operate to relieve any person from the obligation imposed by Section 209 to obtain separate sanction for any structure referred to therein.

Sanction-Effect.—Any sanction would not beyond exempting the person to whom it was given, from any penalty or consequences to which he would otherwise be liable, confer or extinguish any right or disability, or operate as estoppel or admission or affect any title to property or have any other legal effect whatsoever².

185. Illegal erection or alteration of a building.—Whoever begins, continues or completes the erection or re-erection of, or any material alteration in, a building or part of a building or the construction or enlargement of a well, without giving the notice required by Section 178, or in contravention [of the provisions of Section 180, sub-section (5) or]¹ of an order of the board refusing sanction or any written directions made by the board under Section 180 or any bye-laws, shall be liable upon conviction to a fine which may extend to five hundred rupees.

Notice.—Issue of notice under this section is not necessary for prosecution under Section 186, although prosecution is more appropriate remedy than demolition³.

Material Alterations.—The raising of the plinth and the alterations made in the size, position or number of the doors or windows cannot be treated as material alterations⁴. Therefore where a person is convicted for making two doorways in his house opening upon a common courtyard, the conviction cannot be sustained⁵. However, if a person acts in pursuance of the written directions of the Board, he will not be liable, if in so acting he commits a breach of any bye-law⁶.

A *kachcha chabutra* made ahead of a *pucca chabutra* cannot be considered as a building or part of a building, in respect of which a notice under Section 178 is

1. *Ins.* by S. 15 of U. P. Act VII of 1949.
2. *Ram Prasad Ghosi Ram v. Bal Krishen*, 1937 A 751=1937 A L J 1158=172 I C 25.
3. *Emperor v. Hashim Ali*, 39 A 482=15 A L J 461.

4. *Emperor v. Babu Ram*, 1923 O 35=23 Cr L J 476.
5. *Joti Prasad v. Emperor*, 1937 A 361=1937 A L J 136=31 Cr L J 669=168 I C 951.
6. *Behrey Mathura Prasad v. Rex*, 1950 A 458=1950 A L J 404.

necessary, and in case of alteration in the chabutra, no prosecution under Section 185 is maintainable¹.

Notified Area-Effect.—If a person residing in a Notified Area, to which the provisions of Sections 180 and 185 of the Municipalities Act have been extended by Notification No. 72/MC/XI 70A dated 6th June, 1917 gives notice to the Notified Area Committee of his intention to erect a building and commences to erect it before the Committee passes an order as contemplated by Section 180 (1) and (2), he is not liable to be prosecuted under Section 185, as amended by Section 15, U. P. Act II of 1919².

186. Power of board to stop erection and to demolish building erected.—The board may at any time by written notice direct the owner or occupier of any land to stop the erection, re-erection or alteration of a building or part of a building or the construction or enlargement of a well thereon in any case where the board considers that such erection, re-erection, alteration, construction or enlargement is an offence under Section 185 and may, in like manner, direct the alteration or demolition as it deems necessary of the building, part of a building, or the well, as the case may be.

Scope.—The section does not require that notice should be given only after orders have been passed under Section 178, which is quite general and applies to cases in which such a notice has been given as well to those in which it has not been so given³. A notice issued by the Executive Officer of a Board under this section is not a notice by the Municipal board, nor does the appellate order of the Board confirming the notice of the Executive Officer fall under Section 318 and the bar of Section 321 does not come into play⁴. It is open to the person prosecuted under Section 307 to impeach the validity of the notice or direction upon grounds referable to Section 186 and not otherwise⁵.

Notice.—A notice under this section must be issued to the owner or the occupier, and a Criminal Court can go into the legality of the notice, and it is open, to the accused to plead that he neither being the owner or the occupier was not in a position to comply with the notice and therefore he was not guilty⁶. The notice must be reasonable and a three days' notice for demolishing a wall cannot be said to be reasonable time⁷.

Civil Court Powers.—If the Board issues a notice, a Civil Court cannot look into the reason that moved the Board to take the action as it is not for the Civil Court to see whether the action is unreasonable, or unnecessary or improper. It has to see whether the Board could issue notices under the section, not whether it should have⁸. It should be presumed, that the Board considered that an offence under Section 185 has been committed, and if a suit is brought challenging the act of the Board, the onus of proof that the Board did not consider that an offence was committed lies heavily on the plaintiff. The Civil Court can then go into the question whether an order which purports to be under this section is in fact an order under the section⁹. Where the order or direction is not in accordance with the powers conferred by this section or Section 211, a suit for an injunction is not barred by Section 321, as the Civil Court has jurisdiction to entertain a suit if it appears that the notice is illegal and *ultra vires*¹⁰. The Civil Court has no jurisdiction to set aside an order of the Board directing the demolition of a construction, the remedy is only by appeal under Section 318¹¹.

Notice—Waiver.—Where a Municipal Board issues a notice to remove a chabutra

1. *Malhoo Mian Abdul Ghani v. State*, 1953 A 548.
2. *Mani Ram v. State*, 1952 A 40 (F. B.).
3. *Kausila v. Emperor*, 1938 O 199=1938 O W N 833 = 39 Cr L J 862=14 Lucknow 147.
4. *Brij Behari Lal v. Emperor*, 1943 A 123=1943 A L J 103=44 Cr L J 426 (F. B.); overruling 1942 A 441.
5. *Ibid.*
6. *Ibid.*
7. *Kausila v. Emperor*, 1938 O 199=39

- Cr L J 862=14 Lucknow 147.
8. *Surjoo Bai v. Municipal Board, Jhansi*, 1943 A 112=1943 A L J 7. See also *M. B. Moradabad v. Shiam Lal*, 1937 A 298=1937 A L J 180.
9. *Ibid.*
10. *Municipal Board, Moradabad v. Habib Ullah*, 1939 A 383=1939 A L J 332.
11. *Municipal Board, Bara Banki v. Rajab Ali*, 3 O W N 511=1926 O 413=29 O C 334.

on the plot, the Board cannot be said to have waived their rights by issuing a second notice to quit the land for failure to remove the *chabutra*¹.

Alteration.—Setting up a roof on a *chabutra* is a least altering part of a building and a notice under this section would not be illegal².

Extinction of fire

187. Establishment and maintenance of fire-brigade.—

The board may establish and maintain a fire-brigade and may provide any implements, machinery, or means of communicating intelligence which it thinks necessary for the prevention and extinction of fire.

188. Power of fire-brigade and other persons for suppression of fires.—(1) On the occasion of a fire in a municipality, any magistrate, any member of the board, the Executive Officer, the Engineer or a Secretary of the board, or any member of the fire-brigade directing its operations and (if required so to do by a magistrate, a member of the board, the Executive Officer, the Engineer or a Secretary of the board) any police officer, above the rank of constable, may—

(a) remove or order the removal of any person who by his presence interferes with or impedes the operations for extinguishing the fire or for saving life or property ;

(b) close any street or passage in or near which a fire is burning ;

(c) for the purpose of extinguishing the fire, break into or through or pull down, or cause to be broken into or through or pulled down or used for the passage of hoses or other appliances any premises ;

(d) cause mains and pipes to be shut off so as to give greater pressure of water in or near the place where the fire has occurred ;

(e) call on the person in charge of a fire-engine to render such assistance as may be possible ; and

(f) generally take such measures as may appear necessary for the preservation of life or property.

(2) No person shall be liable to pay damages for an act done by him under sub-section (1) in good faith.

(3) Any damage done in the exercise of a power conferred for a duty imposed by this section shall be deemed to be damaged by fire within the meaning of a policy of insurance against fire.

Public drains

189. Construction of public drains.—(1) The board may construct, within or, subject to the provisions of sub-section (2) of Section 120, outside the municipality, such drains as it thinks necessary for keeping the municipality properly cleansed and drained and may carry such drains through, across or under any street or place, and after reasonable notice in writing to the owner or occupier into, through or under any buildings or land.

(2) Provided that no drain shall be constructed within the limits of a cantonment without the approval of the [State Government]³ and otherwise than with the concurrence of the General Officer Commanding the division in which such cantonment is situate or, in the event of such concurrence being withheld, the previous sanction of the [Central Government]⁴.

1. *Munshi Lal v. Emperor*, 1933 A 657= 55 A 603=1933 A L J 1190.

2. *Ibid.*

3. Subs. by the A. O. 1950 for (Provl.

Govt.) which had been subs. by the A. O. 1937 for (L. G.).

4. Subs. for [G. G. in C.] by the A. O. 1937.

Scope.—This section does not refer to the outfall of any drain which may be constructed by a municipality. It does not empower the Board to take its sewage outside the municipal boundaries and dispose of it where it likes upon private property regardless of the rights of the property owner, and without his consent or without compensation¹.

190. Alteration of public drains.—(1) The board may, from time to time, enlarge, lessen, alter the course of, cover in or otherwise improve a public drain and may discontinue, close up or remove any such drain.

(2) The exercise of the power conferred by sub-section (1) shall be subject to the condition that the board shall provide another and equally effective drain in place of any existing drain of the use of which any person is deprived by the exercise of the said power.

191. Use of public drains by private owners.—(1) The owner or occupier of a building or land within the municipality shall be entitled to cause his drains to empty into the drains of the board, provided that he first obtains the written permission of the board, and that he complies with such conditions consistent with any bye-law as the board prescribes as to the mode in which, and the superintendence under which the communications are to be made between drains not vested in the board and drains which are so vested.

(2) Whoever, without the written permission of the board or in contravention of any bye-law or of any direction or condition made or imposed under sub-section (1), makes or causes to be made, or alters or causes to be altered, a connection of a drain belonging to himself or to some other person with a drain vested in the board shall be liable upon conviction to a fine which may extend to fifty rupees, and the board may by written notice require such person to close, demolish, alter, re-make or otherwise deal with such connection as it deems fit.

192. Power of board to enforce drainage connection with public drains.—(1) When a building or land situated within one hundred feet of a public drain is at any time not drained to the satisfaction of the board by any or a sufficient drainage connection with such drain, the board may, by notice require the owner or occupier of such building or land to make and maintain a drainage connection with the drain in such manner as the board, subject to the provisions of any bye-law, directs.

(2) The provisions of Sections 306 to 312 (inclusive) shall apply to default in compliance with any such requisition, notwithstanding that part of the land through which the said drainage connection is required to pass may not belong to the person so making default, unless he shall prove that the default was caused by the act of the owner or occupier of such last mentioned land, and he has made application to the board under Section 193.

193. Power of private person to carry a drain through the land of another person.—(1) Any person desiring that an existing or proposed drain on his land shall be carried through or under the building or land, or connected with the drain, of another person owning a building or land abutting on, or a drain connected with a municipal drain may apply to the board.

(2) The board on receiving an application under sub-section (1) may call upon the other person to show cause, within a specified period,

1. *Municipal Board, Gorakhpur v. Kamla-pati Rai*, 1941 A 78=1940 A L J

why the applicant's drain should not be carried through or under his building or land or connected with his drain.

(3) The board shall hear any objection made by such person if submitted within the specified period, and thereafter, if it considers that the drain or drainage connection should be made, shall record an order to this effect.

(4) The order shall set out in writing—

- (a) the period within which the parties shall come to an agreement as to the construction of the drain or drainage connection;
- (b) the period within which the drain or drainage connection shall be made;
- (c) the respective responsibilities of the parties concerned for the maintenance, repair, and cleansing of the drain or drainage connection when made; and
- (d) the sum (if any) payable, whether in the form of rent or otherwise, by the person making the application to the owner of the land, building or drain, as the case may be.

(5) If the sum awarded under clause (d) of sub-section (4) take the form of a lump payment, the board may recover it in the manner provided by Chapter VI and pay any sum recovered to the person to whom it is due. If a rent has been awarded, the person to whom it is due may recover it by suit in any civil court having jurisdiction.

(6) If the parties concerned fail to agree within the period specified in the order, or if the drain or drainage connection is not constructed within the period specified for its construction, the board may itself construct it and may recover the cost from the applicant in the manner provided by Chapter VI.

Scope.—The rights of a plaintiff is limited to making an objection to the Board. If the Board neglects to give a notice, the plaintiff has no right to sue¹. A contract by Board to construct drain over obstructor's land without notice to him is invalid².

194. Right of owner to divert drain on his land.—The owner of any land into, through or under which a drain has been carried under the provisions of the preceding section may, at any time, with the written permission of the board and subject to such conditions as the board may impose divert the drain at his own expense.

Assessment.—The basis in the case of non-residents is the value of the property or trade, and not on profits or losses³.

Scavenging and cleansing

195. Definition of house-scavenging.—House-scavenging means the removal of filth, rubbish, ordure, or other offensive matter from the dustbin, privy, cesspool or other receptacle for such matter in or pertaining to a house or a building.

196. Adoption and relinquishment by board of house-scavenging, etc.—Subject to the provisions hereinafter contained with respect to the rights of customary sweepers and of agriculturists, the board may—

- (a) by public notice undertake the house-scavenging of any houses or buildings or the cleansing of any latrines or

1. *Bhawani Prasad v. Pahlad Singh*, 1930 A 531.

2. *Chitaria v. Municipal Board, Bindraban*,

1929 A 116.

3. 1924 O 418.

- privies in the municipality from a date not less than two months after issue of the notice ;
- (b) after giving by public notice or otherwise not less than two months' notice to the parties concerned, relinquish an undertaking under clause (a) ;
 - (c) on the application or with the consent of the occupier, at any time undertake the house-scavenging of a house or building or the removal of nightsoil from any latrine or cesspool in any building or on any land or the removal of other offensive matter or rubbish from a building or land, on terms to be fixed by bye-law in this behalf ; and
 - (d) after giving not less than two months' notice to the occupier, relinquish an undertaking under clause (c).

197. Objection to adoption.—(1) The occupier of a house or building affected by a notice issued under clause (a) of Section 196 may, at any time after the issue thereof, apply to the board to exclude that house or building from the notice.

(2) The board shall consider and pass orders upon such application within six weeks of the receipt thereof, and may by such order exclude such house or building from the notice.

(3) In deciding whether to exclude a house or building from the notice, the board shall consider, among other matters, the efficiency of the arrangements for house-scavenging made by the occupier.

198. Continuance of house-scavenging once adopted by board.—When the board has undertaken the house-scavenging of a house or building under Section 196, it may continue to perform such house-scavenging, with or without the consent of the occupier for the time being of such house or building.

199. Powers of municipal servants for house-scavenging.—The servants of the board employed in house-scavenging may, at all reasonable times, do all things necessary for the proper performance of any house-scavenging undertaken by the board.

200. Savings in favour of customary sweepers and of agriculturists.—Notwithstanding anything in Section 196, the board shall not, except in accordance with the provisions of Sections 201 and 202—

- (a) undertake the house-scavenging of a house or building in respect whereof a sweeper has a customary right to do such house-scavenging without the consent of the sweeper, or
- (b) undertake the house-scavenging of a house or building occupied by an agriculturist who himself cultivates land within municipal limits or in a village conterminous therewith without the consent of the occupier.

201. Punishment of customary sweepers for negligence.—(1) Should a sweeper who has a customary right to do the house-scavenging of a house or building (hereinafter called the customary sweeper) fail to perform such house-scavenging in a proper way, the occupier of the house or building or the board may complain to a magistrate.

(2) The magistrate receiving such complaint shall hold an enquiry, and should it appear to him that the customary sweeper has failed

to perform the house-scavenging of the house or building in a proper way or at reasonable intervals, he may impose upon such sweeper a fine which may extend to ten rupees, and upon a second or any later conviction in regard to the same house or building, may also direct the right of the customary sweeper to do the house-scavenging of the house or building to be forfeited, and thereupon such right shall be forfeited.

202. Procedure in case of default by agriculturist.—(1) Should an agriculturist who himself cultivates land within municipal limits or a village conterminous therewith fail to provide for the proper house-scavenging of a house or building occupied by him, the board may complain to a magistrate.

(2) The magistrate receiving the complaint shall hold an enquiry, and should it appear to him that the agriculturist has not provided for the proper house-scavenging of the house or building, he may pass an order empowering the board to undertake the same, and thereupon the board shall be entitled to undertake such house-scavenging.

Street Regulations

203. Provision of laying out and making a street before the construction of a building on a site which does not abut a public or private street.—¹[Except where a site abuts a public or private street, if any person owning or possessing any land not hitherto used for building purposes intends to utilise, sell, lease or otherwise transfer such land or any portion thereof as site for the construction of a building, he shall, before utilising, selling, letting or otherwise transferring such site, lay out and make a street which shall connect such site with an existing public or private street.]

204. Permission to lay out and make a street.—²(1) Every person before beginning to lay out or make a new private street shall submit an application in writing to the Board seeking permission to lay out or make such street and shall, along with such application, submit plans showing the following particulars :

- (a) the proposed level, direction and width of the street,
- (b) the street alignment and the building line and shall also state in the application the arrangements to be made for the levelling, paving, metalling, flagging, channelling, sewerage, raining, conserving and lighting of the street.

(2) The provisions of this Act and of any rules of by-laws made thereunder as to the level and width of a public street and the height of a building abutting thereon shall apply to the case of a street referred to in sub-section (1) ; and all other particulars referred to in that sub-section shall be subject to the approval of the Board.

(3) Within sixty days after the receipt of an application under sub-section (1) the Board shall either sanction the laying out or the making of the street on such conditions as it may think fit to impose or disallow it, or ask for further information with respect to it within a specified reasonable period.

1. Subs. by S. 73 of U. P. Act VII of 1949.

2. Subs. by S. 74 of *ibid.*

(4) Such sanction may be refused—

- (i) if the proposed street would conflict with any arrangements which have been made or which are, in the opinion of the Board, likely to be made for carrying out any general scheme of street improvement, or
- (ii) if the proposed street does not conform to the provisions of the Act, rules and by-laws referred to in sub-section (2), or
- (iii) if the proposed street is not designed so as to connect at least at one end with a public or a private street which is already connected with a public street.

(5) No person shall lay out or make any new private street or road without, or otherwise than in conformity with, the orders of the Board. If further information is asked for under sub-section (3), the laying out or making of the street shall not be commenced until orders have been passed on the application after receipt of such information :

Provided that the passing of such orders shall not in any case be delayed by more than thirty days after the Board has received all the information which it considers necessary for the final disposal of the application.]

205. Sanction of the Board to be presumed for laying out and making of street in certain cases.—[Should the Board neglect or omit for sixty days after the receipt of an application under sub-section (1) of Section 204 or if an order has been issued under sub-section (3) asking for further information, fail within a period specified in such order to deliver to the person who has submitted the application, particulars of the information required by the Board, such person may, by a written communication call the attention of the Board to the omission, neglect or failure, and if such omission, neglect or failure continues for a further period of thirty days, the Board shall be deemed to have sanctioned the laying out and making of the proposed street absolutely :

Provided that nothing contained herein shall be construed to authorise any person to act in contravention of any provisions of the Act or any by-laws.]

206. Duration of sanction.—(1) A sanction given or deemed to have been given by a board under [Sections 204-205]² shall be available for one year.

(2) After the expiry of the said period, the proposed street may not be commenced except in pursuance of a further sanction applied for and granted under the foregoing sections.

207. Illegal making of a street.—Whoever begins, continues or completes the laying out or making of a street without giving the notice required by Section [204]³ or in contravention of any written directions made by the board under Section 205 or any by-law or any provision of this Act shall be liable upon conviction to a fine which may extend to five hundred rupees.

1. Subs. by S. 75 of U. P. Act VII of 1949.
2. Subs. for (Section 205) by S. 76 of

ibid.
3. Subs. for (203) by S. 77 of *ibid.*

208. Power of board to alter unsanctioned street and demolish the same.—¹[(1) If any person lays out or makes any street referred to in Section 204, without or otherwise than in conformity with the orders of the board, the board may, notwithstanding any prosecution which may have been started against the offender under this Act, by notice in writing—

- (a) require the offender to show sufficient cause by a written statement signed by him and sent to the board on or before such date as may be specified in the notice, why such street could not be altered to the satisfaction of the Board, or if such alteration be impracticable, why such street should not be demolished, or
- (b) require the offender to appear before the board either personally or by a duly authorised agent, on such day and at such time and place as may be specified in the notice, and show cause as aforesaid.

(2) If any person on whom such notice is served fails to show sufficient cause to the satisfaction of the board, the board may pass such order directing the alteration or demolition of the street as it thinks fit.]

209. Sanction of board to projections over streets and drains.—(1) Subject to any rules made by the [State Government]² prescribing the conditions for the sanction by a board of projections over streets or drains, a board may give written permission, where provision is made by a by-law for the giving of such permission—

- (a) to the owners or occupiers of buildings in or on streets to erect or re-erect open verandahs, balconies, or rooms, to project over the street from any upper storey thereof, at such height from the surface of the street, and to such an extent beyond the line of the plinth or basement wall as are prescribed in such by laws; and
- (b) to the owner or occupier of any building or land to erect or re-erect any projection or structure so as to overhang, project into, or encroach on or over a drain in a street to such an extent, and in accordance with such conditions as are in like manner prescribed.

(2) In giving permission under clause (a) of sub-section (1), a board may prescribe the extent to which, and the conditions under which, any roofs, eaves, weather-boards, shop-boards and the like may be allowed to project over such streets.

Applicability.—The operation of Section 209 (b) is not confined to public drains. All that is needed to attract the operation of this provision is that the drain over which it is sought to make some structure or projection should be situated in a street as defined in Section 2 (23). Any person wishing to make a structure or projection over a private drain is bound to obtain permission, provided the drain lies in a street³. The Board can give the permission only if provision has been made by the bye-laws authorising it to give such permission⁴.

1. Subs. by S. 78 of U. P. Act VII of 1949.

2. Subs. by the A. O. 1950 for (Prov. Govt.), which had been subs. by the A. O. 1937 for (L. G.).

3. *Bajnath Ram v. Emperor*, 1936 A 36=1935 A L J 1260=58 A 480.

4. *Mohammad Basit Ali Khan v. Municipal Board Agra*, 1947 A L J 1916=1948 A 112.

210. Penalty for construction of projections over streets or drains without permission.—Any person erecting or re-erecting any such projection or structure as is referred to in Section 103 without the permission thereby required or in contravention of any permission given thereunder shall be liable on conviction to a fine which may extend to two hundred and fifty rupees.

Structure.—The word "structure" means of a permanent character¹. Where the construction alleged to have been erected is made of planks which are either fixed permanently to a pacca shop or fixed to it by hinges, it is a construction in the nature of a permanent erection and the case would be fully covered by this section².

211. Power to remove encroachments and projections over streets and drains.—The board may, by notice, require the owner or occupier of a building to remove, or to alter a projection or structure overhanging, projecting into or encroaching on a street, or into, on or over any drain, sewer or aqueduct therein :

Provided that in the case of any such projection or structure lawfully in existence on or before the 10th day of March, 1900, the board shall make compensation for any damage caused by the removal or alteration, which shall not exceed ten times the cost of erection and demolition.

Scope and Applicability.—Where, an owner of a block of shops on whom a notice under this section has been served sells the block in two lots to two different purchasers and notice is served on the purchaser to comply with the notice, and subsequently as a result of dispute between the two purchasers, one is dispossessed of the shops originally in his possession, but is given other shops, it is possible for the purchaser so dispossessed to comply with the terms of the notice and his failure to do so brings him within the clutches of the law³. In order that Section 321 be applicable it is necessary that the order or direction made by the Board should be under the powers conferred upon it by Section 186 or 211⁴. But Sections 211 and 293 must be considered separately. It was never the intention of the legislature that the Board should be allowed to impose a fee for projections which were old and were already in existence when the notification issued by the Board imposing such fee came into existence⁵. If the Board has lost its rights to any portion of the street by adverse possession to remove the possession therefrom is not warranted by this section⁶.

Notice—Validity.—This section authorises the Board to issue notice of removal even with respect to structures permitted by it under Section 209⁷. Where a notice gives a concessional condition that the Board would grant permission for the retention of the projection if the fees according to projection bye-laws are agreed and paid, it is a valid notice⁸. A notice under this section would not be bad, if it omits to mention the compensation that the Board would be prepared to pay for the damage likely to be caused by the removal of the projections⁹. So also mis-statement of facts in the notice would not make it invalid, and the mistake if any can be corrected in appeal¹⁰. However to sustain prosecution, the notice must be valid¹¹.

Service of Notice.—A firm is not a legal person, it is merely a convenient name for the individuals composing it. Therefore when a notice is issued to a person not in his name, but in the name of the firm of which he is a partner, the notice must be deemed to have been issued to every partner¹². A notice issued to a partner, when served on the munib of the firm must be deemed to have been validly served¹³.

Civil Court.—So long as the municipality acts within its jurisdiction, the order contained in a notice under Section 211 cannot be challenged in a Civil Court¹⁴. Any

1. *Emperor v. Mohammad Yusuf* 39 A 386=15 A L J 290=18 Cr L J 669.

2. *Ram Sarup v. Emperor*, 1948 A 144=1947 A L J 702=49 Cr L J 172.

3. *Moti Lal v. Emperor*, 1939 A 701=1939 A L J 703=184 I C 385.

4. *Municipal Board, Moradabad v. Habibullah*, 1939 A 383=1939 A L J 332.

5. *Municipal Board Kanauj v. Manohar Lal*, 1946 A W R 85 (H C).

6. *Municipal Board Lucknow, v. Kall*, 1948 O W N 224.

7. *Mohammad Bax Ali Khan v. Municipal*

Board Agra, 1947 A L J 427.

8. *Municipal Board, Rae Bareilly v. Suraj Bali*, 1946 O 238=1946 O W N 236=225 I C 194=21 Luck 505.

9. *Ibid.*

10. *Ibid.*

11. 1928 A 95=29 Cr L J 274.

12. *Mathura Prasad v. Emperor*, 1942 A 441=1942 A L J 591=44 Cr L J 84.

13. *Ibid.*

14. *Municipal Board, Rae Bareilly v. Suraj Bali* 1946 O 238.

order or direction mentioned in Section 318 cannot be questioned in any other way than that laid down in the section, and an order issued by Executive Officer in view of Section 2 (1) read with Schedule II cannot be questioned in a Court of Law³. However the Board has no jurisdiction to pass an order with respect to projections overhanging a private piece of land and the order can be challenged in Civil Court⁴.

212. Power to require levelling, paving, etc., of a street.—

¹[(1) If any private street or part thereof is not levelled, paved, metalled, flagged channelled, sewerred, drained, conserved, or lighted to the satisfaction of the board, the board may by notice require the owners or occupiers of premises, fronting, or abutting such street or part thereof to carry out any work which in its opinion may be necessary, and within such time as may be specified in such notice.

(2) If such work is not carried out within the time specified in the notice, the board may, if it thinks fit, execute it and the expenses incurred shall be recovered from the owners or occupiers in default under Chapter VI according to the frontage of their respective premises and in such proportion as may be settled by the board.

(3) If any street has been levelled, paved, metalled, flagged, channelled, sewerred, drained, conserved and lighted under the provisions of the preceding sub-sections, such street shall, on the requisition of not less than three-fourths of the owners thereof, be declared a public street.]

212-A. Power of the board to control and regulate the construction of any building or street and drains beyond municipal limits.—²[Notwithstanding anything contained in the principal Act, a board may control and regulate under this chapter the construction of any building, streets and drains beyond its limits up to a distance of two miles, if in the opinion of the board such construction would, or is likely to, conflict with any arrangements which have been made or which are likely to be made for carrying out any town planning or housing scheme].

213. Power to require the protection of streets during erection of buildings, etc.—(1) No person shall cut down any tree or cut off a branch of any tree, or erect or re-erect or demolish any building or part of a building or alter or repair the outside of any building where such action is of a nature as to cause obstruction, danger or annoyance, or risk of obstruction, danger or annoyance to any person using a street, without the previous permission in writing of the board.

(2) The board may at any time by notice require that any person doing or proposing to do any of the acts referred to in sub-section (1) shall refrain from beginning or continuing the act unless he puts up, maintains, and provides from sunset to sunrise with sufficient lighting such hoardings or screens as are specified or described in the notice, and may further at any time by notice require the removal, within a time to be specified in the notice, of any screen or hoarding erected in anticipation or in pursuance of any of the said acts.

3. 1942 A 441=1942 A L J 591 (F. B.).

4. 1925 A 234=85 I C 761.

1. Subs. by S. 79 of U. P. Act VII of

1949.

2. Ins. by S. 80 of *ibid*.

(3) Whoever contravenes the provisions of sub-section (1) shall be liable on conviction to a fine which may extend to fifty rupees, and to a further fine which may extend to five rupees for every day on which contravention continues after the date of the first conviction.

Daily fine.—The imposition of a daily fine is not legal¹.

§ 14. Power to require trimming of hedges and trees.—

The board may, by notice, require the owner or occupier of any land to cut or trim the hedges growing thereon and bordering on a street, or any branches of trees growing thereon which overhang a street and obstruct the same or cause danger.

§ 15. Power to remove accidental obstructions.—When a private house, wall or other erection or anything fixed thereto or a tree shall fall down and obstruct a public drain or encumber a street, the board may remove such obstruction or encumbrance at the expense of the owner of the same and may recover such expense in the manner provided by Chapter VI, or may by notice, require the owner to remove the same within a time to be specified in the notice.

§ 16. Regulation of troughs and drain-water pipes affecting a street.—The board may, by notice, require the owner or occupier of any building or land abutting on a street to put up and keep in good condition proper troughs and pipes for receiving and carrying off the water from the building or land and for discharging the same in such manner as the board may think fit, so as not to inconvenience persons passing along the street.

§ 17. Naming of streets and numbering of buildings.—(1) The board may—

- (a) cause a name or a new name to be given to a street, and
- (b) cause the name or the new name to be affixed to or marked on any building in such position as it thinks fit, or
- (c) require by a written notice the owner or occupier of any building to affix thereto a number plate or new number plate of a pattern approved by the board or itself cause a number or a new number to be affixed to or marked on any building.

(2) Any person destroying, pulling down, defacing or altering any name or number or number plate affixed to or marked on a building under sub-section (1) or affixing to or marking on a building a different name or number from that affixed or marked by or under the order of the board shall be liable on conviction to a fine which may extend to twenty-five rupees.

Note.—Sec. G. O. No. 561 dated September 29, 1880.

§ 18. Power to attach brackets to buildings, etc.—(1) The board may erect upon any premises, or attach to the outside of any building, or to any tree—

- (a) posts, brackets or other supports for oil, gas, electric or other lamps,
- (b) posts, brackets or other supports for telegraph wires, telephone wires or wires conducting electricity for locomotive purposes, or

1. *Ram Lal v. Municipal Board, Badaun*, 1925 A 251=40 A 569.

(c) shafts or pipes deemed necessary for the proper ventilation of drains and water-works :

(2) Provided that the erection or attachment of such supports, shafts and pipes shall not be effected in the manner to occasion injury or inconvenience and shall be subject, so far as may be, to any provisions of the Indian Telegraph Act, 1885,⁴ applying to the attachment, removal or alteration of a telegraph line or posts.

Public streets

219. Power to construct, improve and provide sites on public streets.—A board may—

- (a) lay out and make a new public street and construct tunnels and other works subsidiary to the same, and
- (b) widen, lengthen, extend, enlarge or otherwise improve any existing public street if vested in the board, and
- (c) turn, divert, discontinue or close any public street so vested, and
- (d) provide within its discretion building sites of such dimensions as it thinks fit to abut on or adjoin any public street made, widened, lengthened, extended, enlarged or improved by the board under clauses (a), (b) and (c) or by the [State Government]¹, and
- (e) subject to the provisions of any rule² prescribing the conditions on which property may be acquired by the board, acquire any land along with the buildings thereon which it considers necessary for the purpose of any scheme or work undertaken or projected in exercise of the powers conferred by the preceding clauses, and
- (f) subject to the provisions of any rule² prescribing the conditions on which property vested in the board may be transferred, lease, sell or otherwise dispose of any property acquired by the board under clause (e) or any land used by the board for a public street and no longer required therefor and in doing so impose any condition as to the removal of any building existing thereon, as to the description of any new building to be erected thereon, as to the period within which such new building shall be completed, and as to any other matter that it deems fit.

220. Use of public streets by vendors and other persons.—Notwithstanding any right or privilege (previously) acquired, accrued, or enjoyed, in a municipality for which bye-laws under sub-head (b) of heading E of Section 298 have been made and are in force, no itinerant vendor, or any other person, shall be entitled to use or occupy any public street or place for the sale of articles or for the exercise of any calling or for the setting up of any booth or stall without the permission of the board given in accordance with such by-laws.

221. Adoption of a street as a public street.—³(1) A board may at any time, and shall, when required by a requisition under sub-section (3) of Section 212, by public notice posted up in a street

1. Subs. by the A. O. 1950 for (Provl. Govt.) which had been subs. by the A. O. 1937 for (L. G.).

2. For rules, see notes. no. 19c6/XI—6H, d. July 5, 1916, and no. 2025/

XI—274, d. June 8, 1935, and pp. 351-352 of M. M.

3. Subs. by S. 81 of U. P. Act VII of 1949.

4. U. C. A., Vol. III, p. 204.

that is not a public street, or in a part of such street, give intimation of its intention to declare the same a public street. Within two months next after such notice has been so posted up the owner or owners of such street or such part of a street, or of a greater portion thereof, may lodge objections at the municipal office against the notice. The board shall consider the objections lodged, and, if it rejects them, may, by further public notice posted up in such street or such part declare the same to be a public street.]

(2) Any public notice required under sub-section (1) shall, in addition to being posted up in the street, be published in a local paper (if any) or in such other manner as the board thinks fit.

Owner's rights-Effect.—The rights of an owner are limited when a street is taken over and vests in and belongs to a public authority. Neither the municipality nor the owners nor the occupiers of houses abutting a public street are entitled to appropriate any minerals which may be beneath the street, the ownership of which remains with the proprietor. It may be that there are certain rights in the air space above the street to which the proprietor is entitled and the infringement of those rights is a question of degree¹.

222. Power to regulate line of buildings on public streets.—(1) Whenever the board considers it expedient to define the general line of buildings on each or either side of any existing or proposed public street, it shall give public notice of its intention to do so.

(2) Every such notice shall specify a period within which objections will be received.

(3) The board shall consider all objections received within the specified period and may then pass a resolution defining the said line, and the line so defined shall be called "the regular line of the street".

(4) Thereafter it shall not be lawful for any person to erect, re-erect or alter a building or part of a building so as to project beyond the regular line of the street, unless he is authorized to do so by a sanction granted under Section 180 or by a permission in writing (and the board is hereby empowered to grant such permission) under this section.

(5) Any owner of land who is prevented by the provisions of this section from erecting, re-erecting or altering any building on any land may require the board to make compensation for any damage which he may sustain by reason of such prevention, and upon the payment of compensation in respect of any land situated within the regular line of the street such land shall vest in the board.

(6) The board may, by notice, require the alteration or demolition of any building or part of a building erected, re-erected or altered in contravention of sub-section (4).

223. Duties of board when constructing public streets, etc.—(1) The board shall, during the construction or repair of a public street or of any water-works, drains or premises vested in it, or whenever any public street, water-works, drain or premises vested in it have, for want of repair, or otherwise, become unsafe for use by the public, take all necessary precautions against accident by—

(a) shoring up and protecting adjacent buildings, and

(b) fixing bars, chains or posts across or in any street for the purpose of preventing or diverting traffic during such construction or repair, and

(c) guarding and providing with sufficient lighting from sunset to sunrise any work in progress.

1. *Arjun v. Mansingh of Jaipur*, 1934 A 338=1934 A L J 48=56 A 784.

(2) Whoever, without the authority or consent of the board, in any way interferes with any arrangement or construction made by the board under sub-section (1) or guarding against accident shall be liable on conviction to a fine which may extend to fifty rupees.

Water-supply

224. Power of board to construct and alter water works.—The board may—

- (a) construct water-works within or, subject to the provision of sub-section (2) of Section 120, outside the municipality, and may carry such works through, across, over or under any street or place, and after reasonable notice in writing to the owner or occupier, into, through, over or under any buildings or land,* * *
- (b) from time to time enlarge, lessen, alter the course of, cover in or otherwise improve any water-works and discontinue, close up or remove the same,
- [²(c) with the previous sanction of the [State Government]³, grant to any person or company a licence to supply water within municipal limits and for this purpose to lay down mains and pipes, construct water-works and do all other necessary acts or things, and
- (d) with the same sanction, transfer all or any part of its existing water-works to the management of such licensee :

Provided that such sanction shall not be given unless the [State Government]³ is satisfied that it will be in the best interests of the public concerned.]

Scope.—A Civil Court has jurisdiction to decide and to declare between two consumers that a pipe line belongs to a particular consumer⁴.

[224-A. Powers and liabilities of licensee.—(1) When a licence is granted under clause (c) of Section 224, the rate at which, the manner in which, and the person by whom, payments shall be made to the licensee for water supplied by him and the terms and conditions on which the licensee may grant water connexions to the consumers shall be settled between the board and the licensee and entered in the licence, and the board may delegate to the licensee any of the powers conferred on it by this Act or rules relating to water-works and water-supply :

Provided that the power of assessment of water-tax and of its recovery otherwise than by a civil suit shall not be delegated to the licensee.

(2) Such licensee with the previous sanction of the board may exercise the powers conferred on the board by Sections 225 and 227 of this Act.]

[224-B. Revocation or amendment of licences.—(1) The

1. The words "and" *del.* by S. 3 of U.P. Act VI of 1933.
 2. *Add. by ibid.*
 3. *Subs.* by the A. O. 1950 for (Provl. Govt.) which had been *subs.* by the A. O. 1937 for (L. G.).

4. 1926 O 396=93 I C 856.
 5. S. 224-A *add.* by S. 4 of U. P. Act VI of 1933.
 6. S. 224-B *add.* by S. 4 of U. P. Act VI of 1933.

board may, with the previous sanction of the [State Government]² and shall, if the [State Government]² in the public interest so directs, revoke a licence granted under clause (c) of Section 224 in any of the following cases :

- (a) where the licensee makes wilful and unreasonable default in doing anything required of him by or under this Act or the rules relating to water-works ;
- (b) where the licensee breaks any of the terms or conditions of his licence the breach of which is expressly declared by such licence to render it liable to revocation ;
- (c) where the licensee is unable, by reason of his insolvency, fully and efficiently to discharge the duties and obligations imposed on him by his licence.

(2) The board may, with the previous sanction of the [State Government]², and on the application or with the consent of the licensee—

- (a) revoke a licence granted under Section 224 (c) as to the whole or any part of the area of supply upon such terms and conditions as it thinks fit, or
- (b) make such alterations or amendments in the terms and conditions of such licence as it thinks fit.]

¹[~~224~~4-C. Provisions where licence of a licensee is revoked.—Where the licence of a licensee is revoked under the preceding section, the following provisions shall have effect, namely—

- (a) the board shall serve a notice of the revocation upon the licensee and shall in the notice fix a date on which the revocation shall take effect ; and on and with effect from such date all the powers and liabilities of the licensee under the licence shall absolutely cease and determine ;
- (b) where a notice of the revocation of a licence has been served on the licensee the board may, within three months after the service of such notice and with the written consent of the [State Government]² by notice in writing require the licensee to sell, and thereupon the licensee shall sell, to the board the whole of the water-works at such value as shall be mutually agreed upon, or in default of such agreement at such value as shall be determined by a valuer appointed by the board and the licensee and in case of their disagreement by the [State Government]² : the licensee shall however be responsible for the establishment employed by him for the undertaking and for any compensation or other payments it may be necessary to incur on their behalf :

Provided that the value of such water-works shall be deemed to be their fair market value at the time of purchase due regard being had to the nature and condition for the time being of such water-works and to the state of repair thereof, and to the circumstances that they are in such a

1. S. 224-C *add* by S. 4 of U. P. Act VI of 1933.

2. *Subs.* by the A. O. 1950 for (Provl. Govt.) which had been *subs.* by the A. O. 1937 for (L. G.).

position as to be ready for immediate working, and to the stability of the same for the purpose of the undertaking, but without any addition in respect of compulsory purchase or of goodwill or of any profits which may or might have been made from the undertaking, or of any similar consideration.

- (c) where any part of the water-works was transferred by the board to the licensee under Section 224 (d), the board may by notice in writing require the licensee to retransfer the same to the board on payment by the board of any sum by which the market value of such part of the water-works may have been enhanced by reason of any arrangement made by the licensee, such sum to be determined in the manner provided in clause (b) of this section.]

225. Power to require private water-course, etc. to be cleansed or closed.—(1) The board may, by notice, require the owner of, or the person having control over, a private water-course, spring, tank, well or other place, the water of which is used for drinking, to keep and maintain the same in good repair and to clean the same, from time to time, of silt, refuse or decaying vegetation, and may also require him to protect the same from pollution in such manner as the board may think fit.

(2) When the water of any such water-course, spring, tank, well or other place is proved to the satisfaction of the board to be unfit for drinking the board may, by notice, require the owner or person having control thereof to desist from so using such water or permitting others to so use it, and if, after such notice, such water is used by any person for drinking, the board may, by notice, require the owner or person having control thereof to close such well, either temporarily, or permanently, or to enclose or fence such water-course, spring, tank, well or other place in such manner as it may direct, so that the water thereof may not be so used.

226. Emergent powers on outbreak of epidemic.—In the event of a municipality, or any part thereof, being visited with an outbreak of cholera or other infectious disease notified in this behalf by the [State Government]¹ the [President]² of the board, or any person authorized by him in this behalf, may, during the continuance of the epidemic, without notice and at any time, inspect and disinfect any well, tank or other place from which water is, or is likely to be, taken for the purpose of drinking, and may, further, take such steps as he deems fit to prevent the removal of water therefrom³.

227. Removal of latrines, etc. near any source of water supply.—The board may, by notice, require an owner or occupier on whose land a drain, privy, latrine, urinal, cesspool or other receptacle for filth or refuse exists within fifty feet of a spring, well, tank, reservoir

1. Subs. by the A. O. 1950 for (Provl. Govt.) which had been subs. by the A. O. 1937 for (L. G.).

2. Subs. for [Chairman] by S. 61 of U. P. Act VII of 1949.

3. See instructions in G. O. no. 7/XVI

—127, d. Jan. 5, 1914, nota. no. 4825/XI—135, d. Dec. 2, 1916, no. 3681/XI—366, d. Dec. 17, 1928 and no. 815/XI—266, d. April 3, 1934, and pp. 422—427 of M. M., 1952 edition.

or other source from which water is, or may be derived for public use, to remove or close the same within one week from the service of such notice.

228. Obligations of board imposing water-tax.—(1) The board of every municipality in which a water-tax is imposed shall be bound—

- (a) throughout a prescribed area or prescribed areas—
 - (i) to maintain a system of water supply through pipes, and
 - (ii) to lay on water at a prescribed pressure and during prescribed hours, and
 - (iii) to supply, in all the chief streets in which mains have been laid, water to stand-pipes or pumps situated at such intervals as are prescribed¹, and
- (b) [subject to the rules as may be framed]² to allow the owner or occupier of any building or land assessed to a prescribed minimum water-tax to connect for the purpose of obtaining water for domestic purposes, the building or land with a main by means of a communication pipe of the prescribed size and description, and
- (c) to supply within every twenty-four hours, to every owner or occupier entitled to a house connection under clause (b) whose land or building is provided therewith, such amount of water as is prescribed³ with reference to the water-tax payable by him and his estimated requirements for domestic purposes, into a storage cistern erected in or on the building or land, of a capacity not less than such amount and of a prescribed pattern and at an altitude not exceeding the maximum prescribed for the same.

(2) The word “prescribed” in sub-section (1) means prescribed by rule under Section 235.

Scope.—Clause (a) of sub-section (1) of this section refers to the supply of water to the general public, and clause (c) is the provision which deals with the duties of the Board for supplying water to owners or occupiers of houses entitled to connection under clause (b)⁴. If water connection is severed by the Board without any reason, a mandatory injunction ordering restoration of connection can be passed⁵. The section refers to the duty of the Board to allow the owner to connect his house for obtaining water from the main. It does not speak of the Board connecting the house with the main pipe or disconnecting it⁶.

229. Supply of water by agreement.—Every board may by agreement supply any owner or occupier of land with any water that he may require for any purpose for such remuneration, consistent with any rate or rates prescribed by rule,⁷ and on such terms and conditions consistent with this Act and with any rule, as are agreed on between the board and such owner or occupier.

1. See model rules 6—8 on p. 511 in *ibid.*

2. *Ins.* by S. 82 of U. P. Act VII of 1949.

3. See not. no. 1906/XI—6H, d. July 5, 1916 and rules 2 and 23 on pp. 388 and 391 of M. M., 1932 edition.

4. *M. Brij Behari Lal v. Municipal Board,*

Jhansi, 1939 A 212.

5. *Municipal Board, Agra v. Kanhaiya Lal*, 1944 O A 1 (B); See also 1929 A 870.

6. 1929 A 870=1930 A L J 94=118 I C 713.

7. See model rules 9 and 12 to 16 on pp. 511—513 of M. M., 1932 edition.

230. Charges for water supply.—(1) When any building or land is connected with a main the board may, so far as is consistent with any agreement made under Section 229, charge the owner, lessor or occupier, whichever is prescribed by rule, for all water consumed at the rate or rates so prescribed :

(2) Provided that the board shall deduct from the charge on account of water supplied in any month one-twelfth of the water-tax assessed on the building or land.

231. Exemption of board from liability owing to accident, etc.—Notwithstanding any obligation imposed on a board by Section 228 or by any agreement made under Section 229, a board shall not be liable to any forfeiture, penalty or damages for failure to supply water, if the failure to supply arises from accident or from unusual drought or other unavoidable cause.

232. Subordination to supply for domestic purposes or supply for other purposes.—Notwithstanding any obligation to supply water imposed by an agreement under Section 229 the board may at any time cease to supply water for other than domestic purposes, if it is of the opinion that such supply would interfere with the supply of water for domestic purposes, and in such case the board shall not be liable to any forfeiture, penalty or damages for so ceasing—

(a) unless the failure to supply such water arises from a cause other than one specified in Section 231, and

(b) unless the board has undertaken to supply water for other than domestic purposes by an agreement made under Section 229 making express provision for forfeiture, penalty or damages upon failure to supply such water.

233. Subordination of rights of supply to restrictive rules.—Notwithstanding anything contained in Section 228, or in any agreement under Section 229, the supply of water to any building or land shall be, and shall be deemed to have been granted, subject to the provisions of any rule made under Section 235, and in particular to any provision as to the limit or stoppage of the supply and as to the prevention of waste and misuse.

234. Provision as to meters and connection pipes.—All meters, connection pipes and other works incidental to the supply of water to any building or land shall, except as otherwise provided by rule, be supplied, repaired, extended and altered, as may be necessary, at the expense of the person requiring the supply, but shall be under the control of the board.

235. Water supply rules.—(1) The following matters relating to the supply of water from municipal or public water-works shall be regulated and governed by rules¹, namely—

1. For rules, see notes. no. 1906/XI—6H., d. July 5, 1916, no. 4105/XI—74-H., d. Oct. 12, 1916, no. 1191/XI—383-E., d. June 17, 1918, no. 1898/XI—383. E., d. Nov. 25, 1920, no. 2551/XI—756. E., d. Sept. 12, 1923, no. 1450/XI—756. E. d. June 26/27, 1924, no. 135/XI—756. E., d. Jan. 19, 1925, no. 1725/XI—756. E., d. July 3, 1925, no. 667/XI—756. E., d. March 10, 1926, no. 1848/XI—532. E., d. July 14, 1926, no. 720/

XI—756-E., d. March 24, 1927, no. 3090/XI—766. E., d. Dec. 22, 1927, no. 827/XI—756-E., d. March 21, 1928, no. 3885/XI—756-E., d. Dec. 6, 1928, no. 2046/XI—756-E., d. July 10, 1931, no. 4648/XI—383-E., d. Dec. 16, 1932, no. 1359/XI—756. E., d. April 23, 1933, no. 2428/XI—91-F., d. Oct. 3, 1936, no. 2322/XI—756-E., d. July 9, 1937, and pp. 388—403 of M. M., 1932 edition.

- (a) any matter in respect of which this Act declares that provision shall be made by rule;
- (b) the size and nature of the mains and pipes to be laid and the water-works to be constructed by a board for the supply of water;
- (c) the construction, control and maintenance of municipal water-works and of pipes and fittings in connection therewith;
- (d) the size and nature of the stand-pipe or pumps to be erected by a board;
- (e) the mains or pipes in which fire plugs are to be fixed and the places at which keys of the fire plugs are to be deposited;
- (f) the periodical analysis by a qualified analyst of the water-supply by a board;
- (g) the conservation and prevention of injury or contamination to sources and means of water-supply and appliances for the distribution of water, whether within or without the limits of the municipality;
- (h) the manner in which connections with water-works may be constructed or maintained and the agency which shall or may be employed for such construction or maintenance;
- (i) the regulation of all matters and things connected with the supply and use of water and the turning on and turning off and preventing the waste of water;
- (j) the collection of water-tax and of charges relating to the supply of water and the prevention of evasion of the same; and
- (k) any other matter relating to the supply of water in respect of which this Act makes no provision or insufficient provision and further provision is, in the opinion of the [State Government]¹ necessary.

(2) Provided that no rule shall be made under sub-section (1) affecting a cantonment or part of a cantonment without the previous sanction of the [Central Government]².

235-A. Rules relating to the supply of water by a person or company.—The following matters relating to the grant of a licence under clause (c) of Section 224 of the Act shall be regulated and governed by rules to be made by the [State Government]¹ subject to the conditions prescribed in Section 300 :

- (1) the selection of a licensee,
- (2) the form of application for a licence,
- (3) the form of licence,
- (4) the preparation and submission of returns and accounts by the licensee in a prescribed form,
- (5) duties of a licensee,
- (6) the securing of a regular and wholesome supply of water by the licensee to consumers,
- (7) the appointment of an officer of a specified rank and class to ensure that the provisions of the Act and the rules relating to water-works are being properly carried out, and

1. Subs. by the A. O. 1950 for [Provl. Govt.] which had been subs. by the A. O. 1937 for (L. G.).
2. Subs. for [G. G. in C.] by the A. O.

1937.
3. S. 235-A add. by S. 5 of U. P. Act VI of 1933.

(8) any other matter which is necessary for the proper working of the licence.]

Power for removal of structures interfering with public works

236. Unauthorized construction or tree over drain or water-work.—(1) Where, on or after the 10th day of March, 1900, any street has been made or any building, wall or other structure has been erected or any tree has been planted without the permission in writing of the board over a public drain or culvert or a water-work vested in the board, the board may—

(a) by notice require the person who has made the street, erected the structure or planted the tree, or the owner or occupier of the land on which the street has been made, structure erected or tree planted, to remove or deal in any other way the board thinks fit with the street, structure or tree, or

(b) itself remove or deal in any other way it thinks fit with the street, structure or tree.

(2) Any expense incurred by a board by action taken under clause (b) of sub-section (1) shall be recoverable in the manner prescribed by Chapter VI from the person by whom the street was made, structure erected or tree planted.

CHAPTER VIII

OTHER POWERS AND PENALTIES

Markets, slaughter-houses, sale of food, etc.

237. Places for slaughter of animals for sale.—(1) The board may, with the approval of the District Magistrate, fix premises, either within or without the limits of the municipality, for the slaughter of animals, or animals of any specified description for sale, and may, with the like approval, grant and withdraw licences for the use of such premises.

(2) When such premises have been fixed by the board beyond municipal limits, it shall have the same power to make by-laws for the inspection and proper regulation of the same as if they were within these limits.

(3) When such premises have been fixed, no person shall slaughter any such animal for sale at any other place within the municipality.

(4) Should anyone slaughter for sale any such animal at any other place within the municipality, he shall be liable on conviction to a fine which may extend to twenty rupees for every animal so slaughtered.

Scope.—This section empowers the board, with the approval of the District Magistrate to fix premises for the slaughter of animals, and when such premises have been fixed, no person shall slaughter animals for sale at any other place. Sections 237 to 241 are merely empowering sections authorising the boards to fix premises for the slaughter of animals for sale. The power to fix premises does not imply a free and unrestricted right to slaughter any animal¹.

238. Places for slaughter of animals not intended for sale or slaughtered for religious purposes.—The board may, by

1. *Buddhu v. Municipal Board*, 1952 A 753 (F.B.).

public notice, and with the previous sanction of District Magistrate, fix premises within the municipality in which the slaughter of animals of any particular kind not for sale shall be permitted, and prohibit, except in case of necessity such slaughter elsewhere within the municipality :

Provided that the provisions of this section shall not apply to animals slaughtered for any religious purpose.

239. Powers of District Magistrate in respect of animals not slaughtered for sale.—Whenever it appears to the District Magistrate to be necessary for the preservation of the public peace or order, he may, subject to the control of the [Prescribed Authority]¹ prohibit or regulate, by public notice the slaughter within the limits of a municipality of animal or animals of any specified description for purposes other than sale and prescribe the mode and route in and by which such animals shall be brought to and meat shall be conveyed from the place of slaughter.

240. Disposal of flesh imported in contravention of a by-law regulating importation.—Should the flesh of any cattle, sheep, goat or swine be brought within municipal limits in contravention of a by-law made under sub-head (e) of heading F of Section 298, it may be seized by an officer of the board authorized in that behalf, and may be destroyed or otherwise disposed of as the board may, by general or special order, direct.

241. Licensing of markets and shops for sale of certain articles.—(1) The right of any person to use any place, within the limits of a municipality, other than a municipal market, as a market or shop for the sale of animals, meat or fish intended for human food, or as a market for the sale of fruit or vegetables, shall be subject to by-laws (if any) made under heading F of Section 298.

(2) Provided that, where any by-law is in force requiring a licence for the establishment or maintenance of a market or shop for the sale of any article mentioned in sub-section (i), the board shall not—

(a) refuse a licence for the maintenance of a market or shop lawfully established at the date of such by-law coming into force, if application be made within six months from such date, except on the ground that the place where the market or shop is established fails to comply with any conditions prescribed by, or under this Act, or

(b) cancel, suspend or refuse to renew any licence granted under such by-law for any cause other than the failure of the licensee to comply with the conditions of the licence or with any provision of or made under, this Act.

Scope.—The statutory power conferred on a Municipal Board to make by-laws for regulating and governing a trade does not, in the absence of an express power of prohibition, authorise making it unlawful to carry on a lawful trade in a lawful manner. A by-law to the effect that no person shall sell or expose for sale, milk, cream, rabri, dahi, etc. without a licence to be granted on payment of fees would be *ultra vires*².

242. Improper feeding of animals kept for dairy purposes or used for food.—Whoever feeds, or allows to be fed, an animal which is kept for dairy purposes, or may be used for food, on filthy or deleterious substances, shall be liable on conviction to a fine which may extend to fifty rupees.

1. Subs. for [Commissioner] by S. 60 of U. P. Act VII of 1949.

2. *Asaram v. Emperor*, 1933 A 593 = 1933 A L J 905 = 143 I C 796.

243. Inspection of places for sale of food, drink and drugs.—The [President]¹, the executive officer, [the medical officer of health]² and, if authorized in this behalf by resolution, any other member, officer or servant of the board may, without notice, at any period of the day or night, enter into and inspect a market, shop, stall or place used for the sale of food or drink for man, or as a slaughter-house, or for the sale of drugs, and inspect and examine any article of food or drink or any animal or drug which may be therein.

244. Seizure of unwholesome article and removal of deleterious and spent drugs.—(1) If, in the course of the inspection of a place under the preceding section, an article of food or drink or an animal appears to be intended for the consumption of man and to be unfit therefor, the board may seize and remove the same, or may cause it to be destroyed, or to be so disposed of as to prevent its being exposed for sale or use for such consumption.

(2) If it is reasonably suspected that a drug has been improperly adulterated or by reason of age or the effect of climate has become inert or unwholesome, or has otherwise become deteriorated in such manner as to lessen its efficacy, or to change its operation, or to render it noxious, the board may remove the same, giving a receipt therefor, and may produce it before a magistrate.

(3) If it appears to a magistrate before whom a drug has been produced under sub-section (2) that the drug has been improperly adulterated or has become inert, unwholesome or deteriorated as aforesaid, he may order the same to be destroyed, or to be so disposed of as to him may seem fit, and if any offence appears to have been committed, he may proceed to take cognizance thereof.

Nuisances from certain trades and professions

245. Regulation of offensive trades.—(1) If it is shown to the satisfaction of a board that any building or place within the limits of the municipality which any person uses or intends to use as a factory or other place of business for the manufacture, storage, treatment or disposal of any article, by reason of such use, or by reason of such intended use, occasions or is likely to occasion a public nuisance, the board may at its option require by notice the owner or occupier of the building or place—

- (a) to desist or refrain, as the case may be, from using or allowing to be used, the building or place for such purpose, or
- (b) only to use, or allow to be used, the building or place for such purpose under such conditions or after such structural alterations as the board imposes or prescribes in the notice with the object of rendering use of the building or place for such purpose free from objection.

(2) Whoever, after receiving a notice given under sub-section (1), uses or allows to be used any building or place in contravention of the notice shall be liable on conviction to a fine which may extend to two hundred rupees and to a further fine which may extend to forty rupees for every day on which he so uses or allows to be used the place or building after the date of the first conviction.

1. Subs. for [Chairman] by S. 61 of U.P. Act VII of 1949.

2. Ins. by S. 27 of the U. P. Act V of 1932.

(3) The [State Government]¹ may, by notification, make the provisions of this section, or of any by-law made under heading G of Section 298, applicable to any area beyond the municipality lying within a distance of a mile from the municipal boundary².

Scope.—The Board in granting sanction and imposing conditions under this section is to consider the interests of the public and is not concerned with the rights or interests of individuals as such³. This section or Section 318 does not relate to private nuisance or the remedies in respect thereof⁴. Section 245 (3) entitles the Commissioner to make the provisions of the section and of any by-law made under heading G of Section 298 applicable to areas within one mile of municipal limits but it does not authorise him to make other by-laws applicable to such area, and such by-laws if made would be *ultra vires*⁵.

Public nuisance—Meaning.—Means a “public nuisance” as defined in the Indian Penal Code⁶.

246. Loitering and soliciting for immoral purpose.—Whoever, in a street or public place within the limits of the municipality, loiters for the purpose of prostitution or importunes a person to the commission of sexual immorality, shall be liable on conviction to a fine which may extend to fifty rupees :

Provided that no court shall take cognizance of an offence under this section except on the complaint on the person importuned, or on the complaint of a municipal officer or a police officer not below the rank of a sub-inspector respectively authorized in this behalf in writing by the board and the District Magistrate.

Scope.—The existence of a complaint is pre-requisite for taking cognizance of a case, and any action taken by a court in the absence of such a complaint would be without jurisdiction⁷.

247. Brothels, etc.—(1) When a magistrate of the first class receives information—

- (a) that a house in the vicinity of a place of worship or an educational institution or a boarding house, hostel or mess used or occupied by students is used as a brothel or for the purpose of habitual prostitution or by disorderly persons of any description, or
- (b) that any house is used as aforesaid to the annoyance of respectable inhabitants in the vicinity, or
- (c) that a house in the immediate neighbourhood of a cantonment is used as a brothel or for the purpose of habitual prostitution,

he may summon the owner, tenant, manager or occupier of the house to appear before him either in person or by agent ; and if satisfied that the house is used as described in clause (a), clause (b), or clause (c), may, by a written order, direct such owner, tenant, manager or occupier, within a period to be stated in such order, not less than five days from the date thereof, to discontinue such use :

1. Subs. by the A. O. 1956 for (Provl. Govt.) which had been subs. by the A. O. 1937 for (L. G.).

2. This power has been delegated to Commissioner (now prescribed authority), see not. no. 1103/XI—504-E. d. June 5, 1918 and pp. 476—478 of M. M., 1952 edition.

3. *Moinuddin v. Abdul Samad*, 1939 A

599=1939 A L J 917.

4. *Moinuddin v. Abdul Samad*, 1937 A 78=1936 A L J 1319=167 I C 230.

5. *Imam Baksh v. Emperor*, 1935 A 903=36 Cr L J 1481=158 I C 919.

6. *Moinuddin v. Abdul Samad*, 1937 A 76.

7. *Abdul Majid v. Emperor*, 1942 O 244=1942 O W N 59=199 I C 156.

Provided that action under this sub-section shall be taken only—

- (i) with the sanction or by order of the District Magistrate, or
- (ii) on the complaint of three or more persons residing in the immediate vicinity of the house to which the complaint refers, or
- (iii) * * *¹ on the complaint of the board.

(2) If a person against whom an order has been passed by a magistrate under sub-section (1) fails to comply with such order within the period stated therein, the magistrate may impose on him a fine which may extend to twenty-five rupees for every day after the expiration of that period during which the house is so used.

Scope.—It is necessary for the magistrate to satisfy himself by evidence that the complainants were persons residing in the immediate vicinity of the house and the house was being used for the purposes mentioned in clause (a) to the annoyance of respectable persons, before he passes an order under Section 247 (b)². The provisions of Section 350, Cr. P. C. apply to such enquiry³.

High Court Jurisdiction.—If a magistrate passes an order under Section 247 (1), he cannot be said to be an inferior criminal court within the meaning of Section 435 of the Criminal Procedure Code, and as such the High Court has no jurisdiction to revise the order under Section 439 of the Code⁴.

248. Begging etc.—***⁵ Whoever, in a street or public place within the municipality, begs importunately for alms, or exposes or exhibits with the object of exciting charity a deformity or disease or an offensive sore or wound, shall be liable on conviction ⁶[to imprisonment which may extend to one month or to a fine which may extend to fifty rupees or to both]

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Public safety

249. Disposal of mad dogs, etc.—The board may authorize any person to destroy or to cause to be destroyed, or to confine or to cause to be confined, for such period as the board may direct, any dog or other animal suffering, or reasonably suspected to be suffering, from rabies, or bitten by a dog or other animal suffering or suspected as aforesaid.

1. The words [in the cases referred to in clauses (a) and (c) of this sub-section] *omit.* by S. 83 of U. P. Act VII of 1949.

2. *Immaman v. Emperor*, 18 A L J 302 = 21 Cr L J 370 = 55 I C 850.

3. 1925 A 245 = 25 Cr L J 651.

4. *Mst. Mithan and another v. The Municipal Board, Orai*, 1956 A W R 176.

5. Number (1) given by S. 2 (b) of U. P. Act VIII of 1942 made by the Governor in exercise of the power assumed by him under S. 93 of G. of I. Act, 1935, has been *omit.* by S. 2 (1) of U. P. Act XIII of 1948.

6. *Subs.* for "to a fine which may extend to twenty rupee" by S. 2 (a) of U. P. Act VIII of 1942 made by

the Governor in exercise of the power assumed by him under S. 93 of G. of I. Act, 1935, and re-enacted by S. 2 (1) of U. P. Act XIII of 1948.

7. *Proviso add.* by S. 2 (b) of U. P. Act VIII of 1942 made by the Governor in exercise of the powers assumed by him under S. 93 of G. of I. Act, 1935, has been *omit.* by S. 2 (1) of U. P. Act XIII of 1948.

8. *Sub. ss. (2) and (3) add.* by S. 2 (c) of U. P. Act VIII of 1942 made by the Governor in exercise of the powers assumed by him under S. 93 of G. of I. Act, 1935, has been *omit.* by S. 2 (1) of U. P. Act XIII of 1948.

250. Muzzling order.—(1) Where in any municipality the prevalence of rabies in the opinion of the board renders it necessary, the board may by public notice require the muzzling, for such period as it thinks fit or until such notice is cancelled, of all dogs within the municipality, or within any part of the municipality.

(2) During such period or time the board may exercise the power conferred by Section 249, in respect of any dog which is found at large without a muzzle after a date to be specified in the notice.

251. Bar to compensation for dogs lawfully destroyed.—No damages shall be payable in respect of a dog or other animals destroyed or otherwise disposed of under the provisions of Sections 249 or 250 or of any by-law made under sub-head (h) or (l) of heading H of Section 298.

252. Neglect of the rule of the road.—Whoever, in driving, leading or propelling a vehicle along a street, fails, except in the case of actual necessity—

(a) to keep to the left, and

(b) when he is passing a vehicle going in the same direction, to keep to the right of that vehicle, shall be liable on conviction to a fine which may extend to ten rupees.

Exception—This section shall not apply in the case of a municipality wholly or in part situated in a hilly tract.

253. Driving vehicles without proper lights.—Whoever drives, leads or propels a vehicle between nightfall and dawn in a street, unless the vehicle is properly supplied with lights, shall be liable on conviction to a fine which may extend to twenty rupees :

Provided that a board may by a special resolution confirmed by the [prescribed authority]¹ direct that this section shall not apply in the case of vehicles proceeding at not more than walking pace.

254. Failure to remove elephant etc. to safe distance.—Whoever, being in charge of an elephant, camel or bear, omits, on being requested to do so, to remove so far as may be practical his elephant, camel or bear to a safe distance on the approach of a horse, whether ridden, driven or led, shall be liable on conviction to a fine which may extend to twenty rupees.

255. Prohibition of tethering of cattle, etc. on street.—(1) The owner or keeper of any cattle or other animals found tethered, or straying about without a keeper, in a street or public place shall be liable on conviction to a fine which may extend to twenty rupees.

(2) An animal found tethered as aforesaid may be removed by a municipal officer or servant or by a police officer to a pound as if the animal had been found straying.

256. Halting vehicles or animals on public grounds.—Where any land vested in the board ²[or any public place] is, without the permission in writing of the board, used as a halting place for any vehicle or animal or as a place of encampment, the owner or a keeper of the vehicle or animal or the person encamping, as the case may be, shall be liable on conviction to a fine which may extend to twenty rupees, and in the case of a continuing breach, to a further fine which may extend to five rupees for every day after the date of the first conviction.

1. *Subs.* for [Commissioner] by S. 60 of U. P. Act VII of 1949.

2. *Ins.* by S. 84 of U. P. Act VII of 1949.

tion during which the offender is proved to have persisted in the commission of the offence.

257. Power as to inflammable structures.—(1) The board may, by public notice, direct that within certain limits to be fixed by it, the roofs and external walls or huts or other buildings shall not be made or renewed with grass, mats, leaves or other highly inflammable materials without the consent of the board in writing.

(2) The board may at any time by written notice require the owner of a building which has an external roof or wall made of any such material as aforesaid, to remove such roof or wall within such reasonable time as shall be specified in the notice, notwithstanding that a public notice under sub-section (1) has not been issued or that such roof or wall was made with the consent of the board or before the issue of such public notice, if any :

Provided that in the case of any such roof or wall in existence before the issue of such public notice or made with the consent of the board, the board shall make compensation for any damage caused by the removal which shall not exceed the original cost of constructing the roof or wall.

(3) Whoever, without such consent as is required by sub-section (1) makes or renews, or causes to be made or renewed, or in disobedience to a notice given under sub-section (2) suffers to remain, a roof or wall of such material as aforesaid, shall be liable on conviction to a fine which may extend to twenty-five rupees and to a further fine which may extend to ten rupees for every day on which the offence is continued, after the date of the first conviction.

258. Power to search for inflammable materials in excess of authorized quantity.—(1) The board may, without notice and at any period of the day or night, enter into and inspect a house or building which is suspected to contain petroleum or other inflammable material, in excess of the quantity permitted to be kept in such house or building under the provision of Section 245 or of any by-law.

(2) Should any such excess quantity of such material be discovered it may be seized and held subject to such order as a magistrate may pass with respect to it.

(3) If the magistrate decides that the material seized was stored in the house or building contrary to any direction made under Section 245 or to the provisions of any by-law, he may pass an order confiscating the same.

(4) Subject to any provision of, or made under, this or any other enactment, the material so confiscated may be sold by order of the magistrate, and the proceeds, after defraying the expenses of such sale, shall be credited to the municipal fund.

(5) No order of confiscation under this section shall operate to prevent any other criminal or civil proceedings to which the person storing the material in excessive quantity may be liable.

259. Stacking, etc. of inflammable materials.—The board may, where it appears to be necessary for the prevention of danger to life or property, by public notice prohibit all persons from stacking or collecting wood, dry grass, straw or other inflammable materials, or from placing mats or thatched huts or lighting fires in a place or within limits specified in the notice.

260. Dangerous quarrying.—(1) If in the opinion of the board, the working of a quarry, or the removal of stone, earth or other material from the soil in any place is dangerous to persons residing in, or entitled to visit, the neighbourhood thereof, or create, or is likely to create, a public nuisance, the board may, by written notice, prohibit the owner of the said quarry or place, or the person responsible for such working or removal, from continuing or permitting the working of such quarry, or the removal of such materials, or may require him to take such order with such quarry or place as the board shall direct for the purpose of preventing danger or abating the nuisance arising or likely to arise therefrom.

(2) If, in any case referred to in sub-section (1), it appears to the board to be necessary in order to prevent imminent danger, it may cause a proper hoarding or fence to be put up for the protection of passengers near a quarry or place, and any expense incurred by the board in taking such action shall be paid by the owner or other persons as aforesaid, and shall be recoverable in the manner provided by Chapter VI.

261. Displacing pavements, etc.—(1) Whoever displaces, takes up or makes an alteration in, or otherwise interferes with, the pavement, gutter, flags or other materials of a public street, or the fences, walls or posts thereof, or a municipal lamp, lamp-post, bracket, direction-post, stand-post, hydrant or other such municipal property therein without the written content of the board, or other lawful authority, and whoever extinguishes a municipal light shall be liable on conviction to a fine which may extend to one hundred rupees.

(2) Any expense incurred by the board by reason of the doing of any such thing as is mentioned in sub-section (1) may be recovered from the offender in the manner provided by Chapter VI.

Scope.—The word "gutter" in the Act cannot be read apart from the words "of a public street". The provisions of this section are intended to protect materials of a public street from damage or interference. The pavement, gutter and flags are part of the materials of the street; a drain which is not part of the street is not material of the street. Such a drain, therefore, is not gutter of a public street¹.

262. Discharging firearms, etc.—Whoever discharges firearms or lets off fireworks or fire-balloons, or engages in a game, in such a manner as to cause, or to be likely to cause, danger to persons passing by or dwelling or working in the neighbourhood, or risk of injury to property, shall be liable on conviction to a fine which may extend to twenty rupees.

263. Powers for prevention of danger from ruinous buildings, unprotected wells, etc.—(1) A board may require by notice the owner or occupier of any land or building—

- (a) to demolish or to repair in such manner as it deems necessary any building, wall, bank or other structure, or anything affixed thereto, or to remove any tree, belonging to such owner or in the possession of such occupier, which appears to the board to be in a ruinous condition or dangerous to persons or property, or
- (b) to repair, protect or enclose, in such manner as it deems necessary, any well, tank, reservoir, pool or excavation belonging to such owner or in the possession of such occupier, which appears to the board to be dangerous

1. *Bafati v. Emperor*, 1939 A 95=1939 A L J 34=179 I C 669.

by reason of its situation, want of repair or other such circumstance.

(2) Where it appears to the board that immediate action is necessary for the purpose of preventing imminent danger to any person or property, it shall be the duty of the board itself, to take such immediate action; and in such case, notwithstanding the provisions of Section 287, it shall not be necessary for the board to give notice, if it appears to the board that the object of taking such immediate action would be defeated by the delay incurred in giving notice.

264. Power to prevent unoccupied buildings or land becoming a nuisance.—The board may, by notice, require the owner of a building or land which, by reason of abandonment or disputed ownership or other cause, is unoccupied and has become a resort of idle and disorderly persons or otherwise occasions, or is likely to occasion, a public nuisance, to secure and enclose the same within a reasonable time fixed in the notice.

265. Obstruction of street.—(1) Whoever without the written permission of the board—

- (a) causes or allows any vehicle, with or without an animal harnessed thereto, to remain or stand so as to cause obstruction in any street longer than may be necessary for loading or unloading or for taking up or setting down passengers, or
- (b) leaves or fastens any vehicle or animal so as to cause obstruction in any street, or
- (c) exposes any article for sale, whether upon a stall or booth or in any other manner, so as to cause obstruction in any street, or
- (d) deposits, or suffers to be deposited, any building materials, box, bale, package or merchandise in any street, or
- (e) erects or sets up any fence, rail, post, stall or any scaffolding or any other such fixtures in any street, or
- (f) in any manner wilfully obstructs or causes obstruction to the free passage of any street, shall be liable upon conviction to fine which may extend to fifty rupees.

(2) The board shall have power to remove any obstruction referred to in sub section (1), and the expense of such removal shall be recoverable from the offender in the manner provided by Chapter VI.

(3) The power exercisable by a board under sub-section (2) to remove obstructions from streets shall also be exercisable for the removal by the board of obstructions from any open space, whether vested in the board or not, which is not private property.

(4) Nothing contained in this section shall apply to any obstruction of a street permitted by the board under any section of this Act or any rule or by-law made or licence granted thereunder.

Scope.—This section is obviously intended to apply to those cases where the obstruction is, in fact caused, although no bye-law has been framed to prevent the obstruction. It does not prevent the Board from preventing by a bye-law any act which would normally cause obstruction and inconvenience to the public¹. In a case of erection of scaffolding in contravention of the provisions of this section, the prosecution need not affirmatively prove the actual obstruction caused by the erection except where such an inference can be drawn².

This section does not contemplate any notice to be issued by the Board or the Executive Officer, it only contemplates a prosecution¹.

266. Digging up of public land.—Whoever, without the written permission of the board, digs up or removes earth, sand or other material from any open space, whether vested in the board or not which is not private property, shall be liable upon conviction to a fine not exceeding fifty rupees, and, if the offence is a continuing offence, to a further fine not exceeding ten rupees for every day during which the offence continues after the date of the first conviction for such offence.

Sanitation and prevention of disease

267. Private drains, cesspools, dustbins, latrines, etc.—(1)
A board may require by notice the owner or occupier of any land or building—

(a) to close, remove, alter, repair, cleanse, disinfect or put in good order any latrine, urinal, water-closet, drain, cesspool, dustbin or other receptacle for filth, sullage-water, rubbish or refuse pertaining to such land or building or to remove or alter any door or trap-door of any such latrine, urinal or water-closet which opens on to a street or drain, or

(b) to provide such latrines, urinals, water-closets, drains, cesspools, dustbins or other receptacles for filth, sullage-water, rubbish or refuse as should in its opinion be provided for the building or land whether in addition or not to any existing ones, or

(c) to cause any latrine, urinal or water-closet provided for the building or land to be shut off by a sufficient roof and wall or fence from the view of persons passing by or dwelling in the neighbourhood.

(2) When requiring under sub-section (1) anything to be provided, altered or done, the board may specify in the notice the description of the thing to be provided, the pattern so as to conform with which the thing is to be altered, and the manner in which the thing is to be done.

Magistrate-Jurisdiction.—The Magistrate has no jurisdiction to enter into the merits of the Board's decision to issue the notice and reverse it, he has simply to consider whether the accused has failed to comply with the notice properly issued to him². The Board can in the interest of public health order the demolition of a building even if it has been sanctioned by it³.

Scope.—The purpose of this section is to protect the public against insanitary conditions, and it does not contemplate or deal with any objection not based upon sanitary grounds. Therefore a notice issued on any other ground than sanitary would not be valid⁴.

268. Latrines for factories, schools or places of public resort.—The board may require by notice any person employing more than twenty workmen or labourers or owning, managing or having control of a market, school or theatre or other place of public resort to provide such latrines and urinals as it may deem fit, and to cause the same to be kept in proper order and to be daily cleansed :

1. *Mohammad Ishaq v. Administrator Municipality*, 1952 A 849.

2. *Municipal Board, Bahraich v. Jwala Prasad*, 1935 O 197=11 O W N 16.2=36 Cr L J 471=154 I C 45 But see 43 A 644=19 A L J 541.

3. *Babu Lal v. Municipal Board, Farrukhabad*, 21 A L J 828=1924 A 157.

4. *Municipal Board, Etawah v. Dobi Prasad*, 42 A 485=18 A L J 572.

Provided that nothing in this section shall apply to a factory regulated by the Indian Factories Act, 1911.¹

269. Power to require removal of nuisance arising from tanks, etc.—(1) The board may by notice require the owner or occupier of any land or building to cleanse, repair, cover, fill up or drain off a private well, tank, reservoir, pool, depression or excavation therein which may appear to the board to be injurious to health or offensive to the neighbourhood.

(2) Provided that the owner or occupier may require the board to acquire at its expense, or otherwise provide, any land or rights in land necessary for the purpose of effecting drainage ordered under subsection (1).

Medical Officer-Notice.—The Medical Officer is quite competent to issue notices under this section if the powers mentioned in Schedule II and Section 269 are delegated to him under Section 112 (1) and the bye-laws of the Board².

Civil Court.—The Board possesses wide powers under this section but they are not to be exercised for ulterior purposes or in a capricious, wanton or arbitrary manner. If they are so used they can be controlled by the Civil Court³.

Limitation.—A suit for a declaration that the notices issued by the Board are illegal, and also for perpetual injunction restraining the Board from issuing such notices is governed by Section 326 (3) and must be instituted within six months from the date of the issue of the notice⁴.

270. Inspection of drains, privies, etc.—(1) Subject to the provisions of Section 278, the board may inspect a drain, privy, water-closet, latrine, urinal, cesspool or other receptacle for filth, and for that purpose may cause the ground to be opened where it thinks fit.

(2) The expense of such inspection and of causing the ground to be closed and made good as before shall be borne by the board, unless the drain, privy, water-closet, latrine, urinal, cesspool or other receptacle for filth is found to be in bad order or condition, or was constructed in contravention of any provisions of, or made under, this or any other enactment, in which case such expenses shall be paid by the owner or occupier and shall be recoverable in the manner provided by Chapter VI.

271. Cleansing of filthy buildings or land.—Should any building or land be in a filthy or unwholesome state, the board may, by notice, require the owner or occupier thereof to cleanse, or otherwise put in a proper state, the building or land, and thereafter to keep the same in a clean and proper state.

Scope.—If a person disobeys a notice to pave the yard on sanitary grounds, the Board can pave it by bricks and recover the costs from the said person⁵.

272. Failure to remove offensive matter.—Wherever on any building or land—

- (a) any dirt, dung, bones, ashes, night-soil or filth, or any noxious or offensive matter is kept for more than twenty-four hours, or otherwise than in some proper receptacle, or
- (b) any receptacle for such things is suffered to be in a filthy or noxious state or is not subjected to any proper method of cleaning or purifying,

1. See now the Factories Act, 1948.
(Act XLIII of 1948).

2. *Govind Deoji v. Municipal Board, Brindaban*, 1938 A 110=1937 A L J 1938=174 I C 445.

3. *Ibid.*

4. *Ibid.*

5. *Mohd. Qasim v. Municipal Board, Saharanpur*, 1923 A 371.

the owner or occupier of the building or land shall be liable, on conviction, to a fine which may extend to fifty rupees, and, in the case of a continuing breach, to a further fine which may extend to five rupees for every day after the date of the first conviction during which the offender has been proved to have persisted in the commission of the offence.

273. Regulation of the disposal of rubbish, night-soil, etc.—(1) The board may—

- (a) provide receptacles and places for the temporary deposit of offensive matter and rubbish ;
- (b) appoint places for the disposal of night-soil, carcasses and other offensive matter and rubbish ; and
- (c) by public notice issue directions as to the time, manner and conditions at, in and subject to which any offensive matter or rubbish referred to in clauses (a) and (b) may be removed along a street, deposited or otherwise disposed of.

(2) It shall be sufficient notice of the appointment of a place under clause (b) of sub-section (1) that a notice board indicating such appointment is displayed on or near the place appointed.

(3) Before appointing a place outside the municipal limits under clause (b) of sub-section (1) the board shall obtain the previous sanction of the District Magistrate.

Board's authority-Nature.—This section does not give an absolute authority to the Board. The authority given is conditional and does not absolve the Board from liability if nuisance results from its acts¹.

274. Penalty for improper disposal of rubbish, night-soil, etc.—The occupier of any building or land from which any offensive matter, rubbish, night-soil or carcass is thrown or deposited on any part of a public place or street, or into any public sewer or drain, or into any drain communicating with a public sewer or drain, otherwise than in a place appointed under clause (b) or in a receptacle provided under clause (a) of sub-section (1) of Section 273, and any person contravening any direction of a board issued under clause (c) of the said sub-section shall be liable, upon conviction, to a fine not exceeding twenty rupees.

Occupier-Meaning.—A person responsible for the upkeep and cleanliness of temple and for all work of the temple is not its occupier within Section 274².

275. Disposal of dead bodies of animals.—(1) Whenever an animal in the charge of a person dies, otherwise than by being slaughtered either for sale or consumption or for some religious purpose, the person in charge thereof shall, within twenty-four hours, either—

- (a) convey the carcass to a place (if any) fixed by the board under Section 273 for the disposal of the dead bodies of animals or to a place beyond municipal limits not being within one mile of those limits, or
- (b) give notice of the death to the board, whereupon the board shall cause the carcass to be disposed of.

(2) Every person bound to act in accordance with sub-section (1) shall, if he fails so to act, be liable upon conviction to a fine which may extend to ten rupees.

(3) For the disposal of the dead body of an animal under clause (b) of sub-section (1) the board may charge such fee as the board has

1. *Municipal Board, Lucknow v. Ram Dei*, 1941 O 52=17 Luck. 173=1940 O W N 834.

2. *Piari Lal v. Emperor*, 39 A 169=18 Cr L J 277.

prescribed, and may recover the same, if not paid in advance, from the owner or keeper of the animal in the manner provided by Chapter VI.

276. Penalty for discharging sewage on public street, etc.—Whenever the water of a sink, sewer or cesspool, or any other offensive matter is allowed to flow, drain or be put upon a public street or place, or into a sewer or drain not set apart for the purpose, without the permission in writing of the board or in contravention of any condition prescribed in such permission, the owner or occupier of the land or building from which such water or offensive matter so flows, drains or is put shall be liable, upon conviction, to a fine which may extend to twenty rupees.

277. Power to enter and disinfect buildings.—Subject to the provisions of Section 287, the board may enter and inspect a building, and may by notice direct all or any part thereof to be internally or externally limewashed, disinfected or otherwise cleansed for sanitary reasons :

Provided that nothing in this section shall apply to a factory regulated by the Indian Factories Act, 1911.¹

278. Building unfit for human habitation.—(1) Should a building, or a room in a building, be, in the opinion of the board, unfit for human habitation in consequence of the want of proper means of drainage or ventilation or otherwise, the board may, by notice, prohibit the owner or occupier thereof from using the building or room for human habitation or suffering it to be so used either absolutely or unless, within a time to be specified in the notice, he effects such alteration therein as is prescribed in the notice.

(2) Upon failure of a person to whom notice is issued under subsection (1) to comply therewith, it shall be lawful for the board to require by further notice the demolition of the building or room.

279. Penalty for failure to give information of cholera, small-pox, etc.—Whoever—

- (a) being a medical practitioner and in the course of such practice becoming cognizant of the existence of cholera, plague, small-pox or other infectious disease that may be notified² in this behalf by the [State Government]³ in any dwelling other than a public hospital in the municipality, or
- (b) in default of such medical practitioner, being the owner or occupier of such dwelling, and being cognizant of the existence of any such infectious disease therein, or
- (c) in default of such owner or occupier, being the person in-charge of, or in attendance on, a person suffering from any such infectious disease in such dwelling and being cognizant of the existence of the disease therein,

fails to give [within twenty-four hours of becoming so cognizant]⁴, or gives false information to such officer as the board may appoint in this behalf respecting the existence of such disease, shall be liable upon conviction to a fine which may extend to fifty rupees :

1. See now the Factories Act, 1948 (Act XLIII of 1948).

2. See notes. no. 4825/XI—135, d. Dec. 2, 1916, no. 3681/XI—336, d. Dec. 17, 1928, and no. 815/XI—266, d. April 3, 1934 and p. 426 of M. M.,

1952 edition.

3. Subs. by the A. O. 1950 for (Provl. Govt.) which had been subs. by the A. O. 1937 for (L. G.).

4. Add. by S. 13 of U. P. Act XVII of 1934.

Provided that a person not required to give information in the first instance, but only in default of some other persons, shall not be punishable if it is shown that he had reasonable cause to suppose that the information had been or would be duly given.

1[279-A. Power to examine persons suspected to be suffering from infectious diseases.—When there is any reason to believe that a case of infectious disease notifiable under Section 279 has occurred in building the medical officer of health or other competent person deputed by him shall, subject to the provisions of Section 287, enter the said building and make an examination of the person or persons suspected to be suffering from the disease and may also obtain material for pathological examination, if necessary :

Provided that all females above the age of eight years shall be inspected by persons of their own sex only.]

280. Removal to hospital of patients.—When a person suffering or certified by a duly qualified medical practitioner to be suffering from cholera, plague, small-pox or any other infectious disease that may be notified¹ in this behalf by the [State Government]³ is—

- (a) without proper lodging or accommodation, or
- (b) living in a sarai or other public hostel, or
- (c) living in a room or house which he neither owns nor is otherwise entitled to occupy, or
- (d) lodged in a room or set of apartments occupied by more than one family and any of the occupiers objects to his continuing to lodge therein,

the board may, on the advice of a medical officer of rank not inferior to that of an assistant surgeon, remove the patient to a hospital or place at which persons suffering from such disease are received for medical treatment, and may do anything necessary for such removal.

281. Penalty for acts done by persons suffering from certain disorders.—Whoever, while suffering from an infectious, contagious or loathsome disorder—

- (a) makes or offers for sale an article of food or drink for human consumption or a medicine or drug, or
- (b) wilfully touches any such article, medicine or drug when exposed for sale by others, or
- (c) takes any part in the business of washing or carrying soiled clothes,

shall be liable upon conviction to a fine which may extend to twenty rupees.

282. Prohibition of cultivation, use of manure, or irrigation injurious to health.—(1) If [the Director of Medical Health Services]⁴ or the Civil Surgeon or Health Officer certifies that the cultivation of any description of crops or the use of any kind of manure or the irrigation of land in any specified manner—

1. S. 279-A add. by S. 28 of U. P. Act V of 1932.

2. See footnote (1) under S. 279.

3. Subs. by the A. O. 1950 for [Provl.

Govt.] which had been subs. by the A. O. 1937 for [L. G.].

4. Subs. by U. P. Act VII of 1953.

- (a) in a place within the limits of a municipality is injurious or facilitates practices which are injurious to the health of persons dwelling in the neighbourhood, or
- (b) in a place within or beyond the limits of a municipality is likely to contaminate the water-supply of such municipality or otherwise render it unfit for drinking purposes.

the board may by public notice prohibit the cultivation of such crop, the use of such manure, or the use of the method of irrigation so reported to be injurious, or impose such conditions with respect thereto as may prevent the injury or contamination :

(2) Provided that when, on any land in respect of which such notice is issued, the act prohibited has been practised in the ordinary course of husbandry for the five successive years next preceding the date of prohibition, compensation shall be paid from the municipal fund to all persons interested therein for damage caused to them by such prohibition.

283. Power to require owners to clear away noxious vegetation.—The board may, by notice, require the owner or occupier of any land to clear away and remove any vegetation or undergrowth which may be injurious to health or offensive to the neighbourhood.

284. Power to require excavations to be filled up or drained.—(1) In a municipality for which by-laws have been made under sub-head (g) of heading 1 of Section 298, the board may, by notice, require the owner or occupier of any land upon which an excavation, cesspool, tank or pit has been made in contravention of such by-laws, or in breach of the conditions under which permission to dig any such excavation, cesspool, tank or pit has been granted, to fill up or drain the excavation, cesspool, tank or pit within a period to be specified in such notice.

(2) The [State Government]¹ may by notification extend the provisions of this section and of by-laws made for the purposes of this section to an area beyond the municipality lying within a distance of a mile from the municipal boundary².

285. Power in respect of burial and burning grounds.—(1) The board may, by public notice, order a burial or burning ground which is certified by the civil surgeon or health officer to be dangerous, or likely to be dangerous, to the health of persons living in the neighbourhood to be closed from a date to be specified in the notice, and shall in such case, if no suitable place for burial or burning exists within a reasonable distance, provide a fitting place, for the purpose.

(2) Private burial places in such burial grounds may be excepted from the notice, subject to such conditions as the board may impose in this behalf:

Provided that the limits of such burial places are sufficiently defined, and that they shall only be used for the burial of members of the family of the owners thereof.

1. Subs. by the A. O. 1950 for [Provl. Govt.] which had been subs. by the A. O. 1937 for [L. G.].
2. For delegation of this power to Com-

missioners, now Prescribed Authority, see not. no. 1108/XI—504E, d. June 5, 1918 and p. 1478 of M. M., 1952 edition.

(3) No burial or burning ground, whether public or private, shall be made or formed without the permission in writing of the board.

(4) No person shall, except with the permission of the board in writing, bury or burn, or cause to be buried or burnt, a corpse in a place other than a recognized burial or burning ground.

(5) Should a person bury or burn, or cause or permit to be buried or burnt, a corpse contrary to the provisions of this section, he shall be liable upon conviction to a fine which may extend to fifty rupees.

286. Bathing and washing places.—The board may set apart suitable places for the purpose of bathing, and may specify the times at which, and the sex of the persons by whom, such places may be used, and may also set apart suitable places for washing animals or clothes or other things; and may by public notice prohibit bathing or the washing of animals or clothes or other things in a public place not so set apart, or at times or by persons other than those specified, and may in like manner prohibit an * * *¹ act by which water in public places [or rivers]² may be rendered foul or unfit for use or which causes or is likely to cause inconvenience or annoyance to persons lawfully using such places.

Inspection, entry, search, etc.

287. Ordinary inspection.—(1) The [President]³, the executive officer and, if authorized in this behalf by resolution, any other member, officer or servant of the board, may enter into or upon a building or land with or without assistants or workmen, in order to make an inspection or survey or to execute a work which a board is authorized by this Act, or by rules or by-laws, to make or execute, or which it is necessary for a board, for any of the purposes or in pursuance of any of the provisions of this Act or of rules or by-laws, to make or execute :

(2) Provided that,—

(a) except when it is in this Act or in rules or by-laws otherwise expressly provided, no such entry shall be made between sunset and sunrise ; and

(b) except when it is in the Act or in rules or by-laws otherwise expressly provided, no building which is used as a human dwelling shall be so entered, except with the consent of the occupier thereof, without giving the said occupier not less than four hours' previous written notice of the intention to make such entry ; and

(c) sufficient notice shall in every instance be given even when any premises may otherwise be entered without notice, to enable the inmates of an apartment appropriated for females to remove to some part of the premises where their privacy need not be disturbed ; and

(d) due regard shall always be had to the social and religious usages of the occupants of the premises entered.

1. The word [other] omit. by S. 2 of U. P. Act IV of 1929.

2. Ins. by *ibid.*

3. Subs. for (Chairman) by S. 61 of U. P. Act VII of 1949.

288. Preventive inspection.—Where there is reason to believe that, in any building or on any land, a work has been executed in connexion with any municipal water-works, drainage works or other municipal undertaking in contravention of the provisions of this Act or of rules or by-laws the [President]¹ or, if so directed by the [President]¹, the executive officer [or the medical officer of health]² may at any time and without notice inspect such building or land.

289. Powers for effecting entry.—It shall be lawful for a person authorized under the provisions of Section 287 or 288 to make an entry for the purpose of inspection, or of search, to open or cause to be opened a door, gate or other barrier—

- (a) if he considers the opening thereof necessary for the purpose of such entry, inspection or search, and
- (b) if the owner or occupier is absent, or being present, refuses to open such door, gate or barrier.

290. Power of board to require certain works to be executed by its own agency.—(1) The board may by by-law require any water-works, or work of the nature to which Sections 192, 267, and 268 refer, to be executed by municipal or other agency under its own orders.

(2) The expenses of any work so executed shall be paid by the person by whom the work would otherwise have been executed, unless the board shall, by a general or special order or resolution, sanction, as it is hereby empowered to sanction, the execution of such work at the charge of the municipal fund.

(3) Any pipes, fittings, receptacles or other appliances for or connected with any water-works, or with the drainage of private buildings or lands shall, if supplied, constructed or erected at the expense of the board, be deemed to be municipal property, unless the board shall have transferred its interest therein to the owner of such buildings or land.

Rent and charges

291. Recovery of rent on land.—(1) Where any sum is due on account of rent from a person to a board in respect of land vested in or entrusted to the management of the board, the board may apply to the Collector to recover any arrear of such rent as if it were an arrear of land revenue.

(2) The Collector on being satisfied that the sum is due shall proceed to recover it as an arrear of land revenue.

292. Recovery of rent of other immovable property.—Any arrears due on account of rent from a person to the board in respect of immovable property other than land vested in or entrusted to the management of the board, shall be recovered in the manner prescribed by Chapter VI.

293. Fees for use otherwise than under a lease of municipal property.—(1) The board may charge fees to be fixed by bylaw or by public auction or by agreement, for the use or occupation (other-

1. Subs. for (Chairman) by S. 61 of U. P. Act VII of 1949.

2. Ins. by S. 29 of U. P. Act V of 1932.

wise than under a lease) of any immovable property vested in, or entrusted to the management of the board, including any public street or place of which it allows the use or occupation whether by allowing a projection thereon or otherwise.

(2) Such fees may either be levied along with the fee charged under Section 294 for the sanction, licence or permission or may be recovered in the manner provided by Chapter VI.

Fees-Nature of.—The fees chargeable under this section do not amount to taxes, although they may be recovered in the manner provided by Chapter VI³. The Board can charge fees for the use and occupation of stands fixed by it, by hackney-carriages or public motor vehicles⁴. The fees can be charged also for past use and occupation⁵.

However the right to collect Tehbazari dues from persons carrying on business in a market is not "use or occupation of immovable property" within the meaning of the section⁶.

Projection-meaning—fees.—Covering a municipal drain before a shop, by putting few slabs, in order to enable customers to cross it, without falling into the drain does not amount to projection from shop, and no fees can be charged⁷. The section authorises a board to charge a fee in respect of projections over municipal property which existed prior to the enactment of the bye-laws imposing such a fee, if the person who made the projections has not acquired any title to the property over which the projection hangs and desires to continue them⁸.

Tehbazari-imposition.—If in essence a bye law is intended to levy an octroi or an import duty, and the tax is leviable irrespective of the fact whether a person is a consumer or a dealer, and whether he uses the public road or land, or not, the bye-law would be illegal, as the tax levied would not be Tehbazari⁹. If a bye law of the Town Area Committee does not purport to fix a fee for the use or occupation of any immovable property vested in or entrusted to the management of the Committee, it would be illegal¹⁰.

293-A. Power to impose fees.—¹[A board may with the previous sanction of the ²[State Government] impose and levy fees for use of any place to which the public is allowed access and at which the board may provide sanitary and other facilities to the public].

294. Licence fees etc.—The board may charge a fee to be fixed by by-law for any licence, sanction or permission which it is entitled or required to grant by or under this Act.

Scope.—A fee of one anna per rupee to be shared equally by the buyer and the seller cannot possibly be regarded as fee contemplated by the section¹¹.

Obstruction to persons employed by board

295. Penalty for obstructing persons employed by board.—Whoever obstructs or molests a person employed by or under contract with the board under this Act in the performance of his duty or in the fulfilment of his contract, or removes a mark set up for the purpose of indicating any levels or direction necessary to the execution of works authorized by this Act, shall be liable on conviction to a fine which may extend to fifty rupees.

3. *Jagannath v. Municipal Board, Saran*, 1939 A 337=1939 A L J 168.

4. *Mewa Ram v. Municipal Board, Multa*, 1949 A 466=1939 A L J 500 183 I C 1 (F. B.).

5. *Notified Area Committee, Deoria v. Sukdev Das*, 1947 A 405=1947 A L J 177.

6. *Sheikh Kallan v. Municipal Board, Aligarh*, 1935 A L J 715.

7. *Municipal Board v. Raghunath Prasad*, 1954 A 121.

8. *Municipal Board, Kanauj v. Manohar Lal*, 1951 A 867.

9. *Trilok Chand v. State*, 1953 A 404.

10. *Mohammad Tasin v. Town Area Committee*, 1952 S C 115.

11. *Add. by S. 85 of U. P. Act VII of 1949.*

26. *Subs. by A. O. 1950 for [Provl. Govt.]*.

114. *Sri Ram v. The Notified Area Committee*, 1952 S C 118.

Scope.—This section deals only with the obstruction to or molestation of a person employed by the Board under the Act⁴. Where what the accused did was more than mere obstruction or molestation in that they adopted a threatening attitude towards the Medical Officer and Sanitary Inspector on their ordering the removal of the ice kept by the accused as being unfit for use, and in consequence both of them had to leave the place the case was not covered by Section 314 of the Act⁵. Refusal to pay charges or advising street vendor not to pay tehbazari charges does not come within the meaning of obstruction⁶. If a contract given by the Municipality contravenes the provisions of the Act, obstruction does not incur penalty⁷.

CHAPTER IX

Rules, Regulations and By-laws

296. Obligation and power of State Government to make rules.—(1) The [State Government]¹ shall make rules consistent with this Act in respect of the matters described in Sections [95, 127, 153 and 235]².

(2) The [State Government]¹ may make rules⁴ consistent with this Act—

(a) providing for any matter for which power to make provision is conferred, expressly or by implication, on the [State Government]¹ by this or any other enactment in force at the commencement of this Act, and

(b) generally for the guidance of a board or any Government officer in any matter connected with the carrying out of the provisions of this or any other enactment relating to municipalities.

⁴[(c) for the appointment of an *ad hoc* committee to advise the board on the preparation of master plan for the municipality and its execution ; and

(d) providing for the lay out of public streets, residential and non-residential areas.]

Rules and Effect.—The rules framed by the Government under this Act have the force of law e.g. rules embodied in the Municipal Accounts Code⁸. Where, according to the rules, the right of an exporter of goods to get refund depends on his adopting the procedure for obtaining a refund, his failure to comply with such procedure prevents him from putting any claim to the refund in Civil Court⁹. The “instructions” regarding *Nazul* entrusted to the management of the Municipal Board have not the force of law, as they are merely departmental instructions, and not rules made by the Government in exercise of the powers conferred by Section 296¹⁰.

Rule 159 of the Municipal Account Code lays down that after the requisite particulars have been abstracted from the railway receipt and invoice, these documents are to be stamped with the municipal stamp and returned to the importer for the express purpose to enable him to obtain his goods from the railway—there is nothing in Rules 159 and 161, which lays down that these documents are not to be returned duly stamped unless the octroi dues have been paid¹¹.

Bring and Import-Meaning.—The words used in notifications of 1919 and No. 48 of 1932 to Rule 2 of the rules framed under the Act contain on element of

1. Subs. by the A. O. 1950 for [Prov. Govt.] which had been subs. by the A. O. 1937 for (L. G.).
2. Subs. by Act I of 1955.
3. Ins. by U. P. Act VII of 1953.
4. *Kallu v. H. S. Dube*, 1936 O 20= 1935 O W N 1124=36 Cr L J 1386.
5. *Kallu v. H. S. Dube*, 1936 O 20=1935 O W N 1124.
6. *Baldeo Pandey v. Emperor*, 19 A L J 914=1921 A 168=22 Cr L J 798.
7. *Chhtaria v. Municipal Board Bindra-*

ban, 1929 A 16=1929 A L J 99=30 Cr L J 691.

8. *Moolchand, Ram Prasad v. Municipal Board, Banda*, 19 6 A 517. See also 35 A 570 (F. B.).

9. *Ibid*.
10. *Municipal Board, Moradabad v. Habib-ullah*, 1939 A 383=1939 A L J 382=184 I C 385.

11. *Ramman Lal v. The Superintendent Octroi*, 1952 A L J 93=1951 A W R 552.

pause and repose, and if the goods merely passed through municipal limits on their way to some other place they cannot be levied with tax⁸.

Renewal of Licence-Failure.—If a person possessing a motor car does not apply for renewal of licence on the expiry of its period, he commits a breach of the rule and for that breach he can be prosecuted. An application for renewal subsequent to the receipt of notice would be of no avail⁹.

297. Power to make regulations as to procedure, etc.—(1) A board may, by special resolution, make regulations consistent with this Act, or with any rule under Section 296 or regulation under sub-section (2) made by the [State Government]¹ as to all or any of the following matters :

- (a) the time and place of the meetings of a board ;
- (b) the manner of convening meetings, and of giving notice thereof ;
- (c) the conduct of proceedings [including the asking of questions by members]² at meetings, and the adjournment of meetings ;
- (d) the establishment of committees, other than merely advisory committees, for any purpose, and the determination of all matters relating to the constitution and procedure of such committees ;
- (e) the avoidance of any entry shown in the third column of schedule II ;
- (f) with reference to sub-section (2) of Section 77, the augmentation of any maximum or minimum monthly salary specified in Section 74, 75, or 76 with reference to powers over the staff ;
- (g) the delegation of powers, duties or functions to—
 - (i) the [President]³ of the board ;
 - (ii) a committee constituted under clause (d) ;
 - (iii) a chairman of such committee ;
 - (iv) the executive officer ; or
 - (v) where there is no executive officer, any other servant of a board ;
- ⁴[(vi) any ⁴[person] in the service of the ⁵(Government) who is employed as civil surgeon, medical officer in charge of a hospital or dispensary, medical officer of health, deputy inspector of schools or sub-deputy inspector of schools] ;
- (h) the absentee or other allowances of the servants employed by a board ;
- (i) the amount and nature of the security to be furnished by a servant of a board from whom it is deemed expedient to require security ;
- (j) the grant of leave to servants of a board and the remuneration to be paid to the persons, if any, appointed to act for them whilst on leave ;
- (k) the [conditions of service including]⁷ period of service of all servants of a board and the conditions under which such servants, or any of them, shall receive gratuities or com-

8. *Nek Mohammad v. Emperor*, 1936 A 83=37 Cr L J 335.

9. *M. H. Faruqi v. Municipal Board, Allahabad*, 1933 A 814=1933 A L J 1369.

1. *Subs.* by the A. O. 1950 for [Prov. Govt.] which had been *subs.* by the A. O. 1937 for [L. G.].

2. *Ins.* by S. 3 of U. P. Act VI of 1919.

3. *Add.* by S. 2 of U. P. Act IV of 1926.

4. *Subs.* by A. O. 1937 for [Govt. servant].

5. *Subs.* by A. O. 1950 for [Crown].

6. *Subs.* by U. P. Act VII of 1953.

7. *Ins.* by U. P. Act VII of 1953.

passionate allowance on retirement, or on other becoming disabled through the execution of their duty, and the amount of such gratuities or compassionate allowances; and the conditions under which any gratuities or compassionate allowances may be paid to the surviving relatives of any such servants whose death has been caused through the execution of their duty ;

(l) the payment of contributions, at such rates and subject to such conditions as may be prescribed in such regulations, to a pension or provident fund established by the board or with the approval of the board, by the said servants ;

(m) the conditions subject to which sums due to a board may be written off as irrecoverable and the conditions subject to which the whole or any part of a fee chargeable for distress may be remitted ; * * *¹

[(n) all matters similar to those set forth in clauses (e) to (m) and not otherwise provided for in this sub-section ; and

(o) all matters similar to those set forth in clauses (a) to (d) and not otherwise provided for in this sub-section;]²

(2) Provided that the [State Government]³ may, if it thinks fit, make regulations consistent with this Act in respect of any of the matters specified in clauses [(d) and]⁴ (h) to [(n)]⁵ of sub-section (1), and any regulations so made shall have the effect of rescinding any regulation made by the board under the said sub-section in respect of the same matter or inconsistent therewith.

298. Power of board to make byelaws.—(1) A board by special resolution may, and where required by the [State Government]³ shall, make byelaws⁶ applicable to the whole or any part of the municipality, consistent with this Act and with any rule, for the purpose of promoting or maintaining the health, safety, and convenience of the inhabitants of the municipality and for the furtherance of municipal administration under this Act.

(2) In particular, and without prejudice to the generality of the power conferred by sub-section (1), the board of a municipality, wherever situated, may, in the exercise of the said power, make any by-law⁶, described in list I below and the board of a municipality, wholly or in part situated in a hilly tract may further make, in the exercise of the said power, any by-law⁶ described in list II below.

LIST I

BYELAWS FOR ANY MUNICIPALITY

A—Building

(a) Extending, with reference to sub-section (2) of Section 178, the

1. The word [and] *del.* by S. 15 of U. P. Act XVII of 1934.

2. *Subs.* for "(n) all other similar matters" by *ibid.*

3. *Subs.* by the A. O. 1950 for [Provl. Govt.] which had been *subs.* by the A. O. 1937 for [L. G.].

4. *Add* by S. 87 of U. P. Act VII of 1949.

5. *Subs.* for "(m)" by S. 15 of U. P. Act XVII of 1934.

6. For model byelaws, *see* pp. 517—529 of M. M. 1952 edition.

- necessity of giving notice to all buildings ;
- (b) declaring, with reference to clause (d) of sub-section (3) of Section 178, an alteration of any specific description to be a "material alteration;"
 - (c) determining the information and plans to be furnished to the board under Section 179;
 - (d) prescribing that, on payment of fees in accordance with such scale as is specified in this behalf, plans and specification shall be obtainable from the board from an agency prescribed by the board ;
 - (e) fixing, with reference to Section 181, the period for which a sanction shall remain in force ;
 - (f) prescribing the type of description of buildings which may or may not, and the purposes for which a building may or may not, be erected in any prescribed area or areas ;
 - (g) prescribing the circumstances in which a mosque, temple, church or other sacred building may or may not be erected, re-erected, or altered ;
 - (h) prescribing with reference to the erection, re-erection or alteration of buildings, or of any class of buildings, all or any of the following matters ;
 - (i) the materials and method of construction to be used for external and party walls, roofs and floor ;
 - (ii) the position and the materials and method of construction of fire-places, chimneys, drains, latrines, privies, urinals and cesspools ;
 - (iii) the height and slope of the roof above the uppermost floor upon which human beings are to live or cooking operations are to be carried on ;
 - (iv) the ventilation and space to be left about the building to secure free circulation of air and to facilitate scavenging and for prevention of fire ;
 - (v) the level and width of foundation, level of lowest floor, and stability of structure ;
 - (vi) the number and height of the storeys of which the building may consist ;
 - (vii) the means to be provided for egress from the building in case of fire ;
 - (viii) any other matter affecting the ventilation or sanitation of the building ; and
 - (ix) the conditions subject to which sanction for the construction or alteration of a well may be refused or granted, with a view to prevent pollution of the water or danger to any person using the well ;
 - (i) regulating, in any manner not specifically provided for in this Act, the erection of any enclosure, wall, fence, tent, awning or other structure, of whatsoever kind or nature, on any land within the limits of the municipality.

B—Drains, privies, cesspools, etc.

- (a) regulating in any manner not specifically provided for in this Act, the construction, alteration, maintenance, preservation, cleansing, and repair of drains, ventilation, shafts and pipes, water-closets, privies, latrines, urinals, cesspools, and other drainage works ;

- (b) regulating or prohibiting the discharge into drains or deposit therein, of sewage, sullage, polluted water and other offensive or obstructive matter ;
- (c) prescribing the size and nature of the works which owners or occupiers may be required to construct under Sections 192, 267 and 268 and the agency which shall or may be employed for executing such works.

C—Extinction of Fire

- (a) prescribing the officer to whom and the place at which the outbreak of a fire shall be reported, and
- (b) generally making provision for the procedure and precautions to be adopted by the public on the occasion of a fire and for any other thing relating to fires in respect of which provision is necessary.

D—Scavenging

- (a) prescribing the times and places at which receptacles of filth, rubbish or other offensive matter shall be in readiness for the removal of the contents by the municipal scavenging agency ; and
- (b) making provision for any other matter relating to house-scavenging.

E—Streets

- (a) Determining the information and plans to be furnished to the board under Section 203 ;
- (b) permitting, prohibiting or regulating the use or occupation of any or all public streets or places by itinerant vendors or by any person for the sale of articles, or for the exercise of any calling or for the setting up of any booth or stall, and providing for the levy of fees for such use or occupation ;
- (c) regulating the conditions on which permission may be given under Section 209 for projections over streets and drains and under Section 265 for the temporary occupation of streets.

F—Markets, slaughter-houses, sale of food, etc.

- (a) prohibiting, subject to the provision of Section 241, the use of any place as a slaughter-house, or as a market or shop for the sale of animals intended for human food or of meat or of fish, or as a market for the sale of fruit or vegetables, in default of a licence granted by the board or otherwise than in accordance with the conditions of a licence so granted ;
- (b) prescribing the conditions subject to which and the circumstances in which, and the areas or localities in respect of which, licences for such use may be granted, refused, suspended or withdrawn ; and
- (c) providing for the inspection of, and regulation of the conduct of business, in a place used as aforesaid, so as to secure cleanliness therein or to minimize any injurious, offensive or dangerous effect arising or likely to arise therefrom ;
- (d) providing for the establishment, and [except so far as provision may be made by by-laws under sub-head (c)] for the regulation and inspection of markets and slaughter-

houses, of livery stables, of encamping grounds of *sarais*, of flour-mills, of bakeries, of places for the manufacture, preparation or sale of specified articles of food or drink, or for keeping or exhibiting animals for sale or hire or animals of which the produce is sold, and of places of public entertainment or resort, and for the proper and cleanly conduct of business therein ;

¹[(dd) prescribing the conditions subject to which, and the circumstances in which, and the areas or locality in respect of which, licences for the purposes of sub-head (d) may be granted, refused, suspended, or withdrawn, and fixing the fees payable for such licences, and prohibiting the establishment of business places mentioned in sub-head (d) in default of licence granted by the board or otherwise than in accordance with the conditions of a licence so granted;]

(e) in a municipality where a reasonable number of slaughter-houses has been provided or licensed by the board, controlling and regulating the admission within municipal limits, for purposes of sale, the flesh (other than cured or preserved meat) of any cattle, sheep, goats or swine slaughtered, at a slaughter-house or place not maintained or licensed under this Act.

G—Offensive trades

(a) Except where and so far as is inconsistent with anything contained in the ²Indian Petroleum Act, 1899, or in rules made thereunder, prohibiting the use of any place, in default of a licence granted by the board or otherwise than in accordance with the conditions of a licence so granted, as a factory or other places of business—

- (i) for boiling or storing offal, blood, bones, guts or rags,
- (ii) for storing hides, horns or skins,
- (iii) for tanning,
- (iv) for the manufacture of leather or leather goods,
- (v) for dyeing,
- (vi) for melting tallow or sulphur,
- (vii) for burning or baking bricks, tiles, pottery or lime,
- (viii) for soap-making,
- (ix) for oil-boiling,
- (x) for storing hay, straw, thatching grass, wood, coal or other dangerously inflammable material,
- (xi) for storing petroleum or any inflammable oil or spirit,
- (xii) for storing and pressing cotton and cotton refuse,
- (xiii) for any other purpose if such use is likely to cause a public nuisance or involve risk of fire ;

(b) prescribing (but not so as to derogate from any power conferred on a board by Section 245) the circumstances in which and the areas or localities in respect of which licences may be granted, refused, suspended or withdrawn ; and

Ins. by S. 88 of U. P. Act VII of 1949.

2. See now the Petroleum Act, 1934 (Act XXX of 1934), U. C. A., V X, p. 256.

- (e) providing for the inspection and regulation of the conduct of business in a place used as aforesaid, so as to secure cleanliness therein or to minimize any injurious, offensive or dangerous effect arising or likely to arise therefrom ;

H—Public safety and convenience

- (a) prescribing the standard weights and measures to be used within the municipality, and providing for the inspection of the same ;
- (b) providing for the regulation or prohibition of any description of traffic in the streets, where such regulation or prohibition appears to the board to be necessary ;
- (c) imposing the obligation of taking out licences on the proprietors or drivers of vehicles [other than motor vehicles]¹ boats or animals kept or plying for hire, or on persons hiring themselves out for the purpose of carrying loads within the limits of the municipality, and fixing the fees payable for such licences and the conditions on which they are to be granted and may be revoked ;
- (d) limiting the rates which may be demanded for the hire of a carriage, cart, boat or other conveyance, or of animals hired to carry loads, or for the services of persons hired to carry loads, and the loads to be carried by such conveyances, animals or persons when hired within the municipality for a period not exceeding twenty-four hours or for a service which would ordinarily be performed within twenty-four hours ;
- (e) prohibiting, in any specified street or area, the residing of public prostitutes and the keeping of a brothel, or the letting or other disposal of a house or building to public prostitutes or for a brothel ;
- (f) for the regulation of the posting of bills and advertisements ;
- (g) fixing and regulating the use of places at which boats may be moored, loaded and unloaded, and prohibiting the mooring, loading, and unloading, of boats except at such places as may be prescribed by the board ;
- (h) providing for the seizure and confiscation of ownerless animals straying within the limits of the municipality ;
- (i) providing for the registration of dogs ;
- (j) providing for the imposition of an annual fee for such registration ;
- (k) requiring that every registered dog shall wear a collar to which shall be attached a token to be issued by the board ;
- (l) providing that a dog, unless registered and wearing such token, may, if found in any public place, be destroyed or otherwise disposed of ;
- (m) prohibiting or regulating, with a view to promoting the public safety or convenience, any act which occasions or is likely to occasion a public nuisance and for the prohibition or regulation of which no provision is made under this heading ;

1. *Ins.* by S. 22 and Sch. II of U. P. Act V of 1935.

- ¹[(n) providing for the confinement, removal or destruction of animals.]

I—Sanitation and prevention of disease

- (a) regulating or prohibiting for the purpose of preventing danger to the public health, the stalling or herding of horses, camels, cattle, swine, donkeys, sheep or goats ;
- (b) prescribing and regulating the construction, dimensions, ventilation, lighting, cleansing, drainage, and water-supply of dairies, and cattle-sheds in the occupation of persons following the trade of dairymen or milk-sellers and providing for the inspection of milch-cattle and securing the cleanliness of milk stores, milk shops, and vessels used by milk-sellers or buttermen for milk or butter ;
- (c) controlling and regulating the use and management of burial and burning grounds and fixing the fees to be charged where such grounds have been provided by the board, and prescribing or prohibiting routes for the removal of corpses to burial or burning-grounds ;
- (d) regulating sanitation and conservancy ;
- (e) declaring that no place, unless specially exempted, shall be used as a lodging-house unless it has been duly licensed as such by the board, and prescribing the conditions subject to which such licences may be granted, refused, suspended, or withdrawn, and fixing the fees payable for such licences ;
- (f) providing, in default of a by-law made under the preceding sub-head, for the registration and inspection of lodging-houses, the prevention of overcrowding, the promotion of cleanliness and ventilation, and prescribing the notices to be given and the precautions to be taken in the case of any infectious or contagious disease breaking out therein, and generally for the proper regulation of lodging-houses ;
- (g) prohibiting the digging of excavations, cesspools, tanks or pits within specified areas except with the permission of the board and specifying the conditions subject to which such permission may be given ;
- (h) prohibiting or regulating, with a view to sanitation or the prevention of disease, any act which occasions, or which is likely to occasion, a public nuisance and for the prohibition or regulation of which no provision is made under this heading.

J—Miscellaneous

- (a) prohibiting or regulating any act which occasions or is likely to occasion, a public nuisance for the prohibition or regulation of which no provision is made elsewhere by or under this Act ;
- (b) providing for the registration of births, deaths, and marriages, and the taking of a census within the municipality and

- for the compulsory supply of such information as may be necessary to make such registration or census effective ;
- (c) for the protection from injury or interference of anything within the municipality being the property of [Government]¹ or of the board, or being under the control of the board ;
 - (d) fixing any charges, or fees, or any scale of charges or fees to be paid for house-scavenging or the cleansing of latrines and privies under Section 196 (c) or for any other municipal service or undertaking or to be paid under Section 293 (1) or Section 294 of the Act, and prescribing the times at which such charges or fees shall be payable, and designating the persons authorized to receive payment thereof ;
 - (e) providing for the holding of fairs and industrial exhibitions within the municipality and under the control of the board, and fixing the fees to be levied thereat ;
 - (f) requiring and regulating the appointment by owners of buildings and lands in the municipality of persons residing within or near the municipality to act as their agents for all or any of the purposes of this Act or of any rule or by-law ;
 - (g) specifying the records and documents belonging to, or in the possession of, the board of which inspection may be made or copies given and the charges to be levied for inspection or copies of such records and documents, and regulating inspection and the giving of copies ;
 - (h) providing for the granting of licences for the sale and for the dispensing of medicinal drugs ;
 - [(i) providing for the registration and control of mid-wives and *dais* publicly practising their professions ;]²

* * *

- ⁴[(k) providing for the establishment and maintenance of maternity centres and child-welfare clinics ;
- (l) providing for establishment, maintenance and grants-in-aid to institutions of physical culture and supply of milk ;
- (m) providing for the installation and maintenance of radio receiving stations ;
- (n) providing for the establishment and maintenance of babyfolds and rescue homes for women ;
- (o) providing for the removal of social disabilities of scheduled castes and backward classes ;
- (p) taking measures for the control of beggary ;
- (q) taking measures for the removal of prostitutes from a specified area to another specified area.]

¹ *Subs.* by the A. O. 1950 for [His Majesty].

² *Add.* by S. 30 of U. P. Act V of 1932.

³ *Item (j) add.* by S. 4 of U. P. Act VIII of 1942, made by the Governor

in exercise of the powers assumed by him under S. 93 of G. of I. Act, 1935, has been *omit.* by S. 2 (1) of U. P. Act XIII of 1948.

⁴ *Ins.* by S. 88 (iii) of U. P. [Act VII of 1949.

LIST II

*Further By-laws for a Hill Municipality**H—Public safety and convenience*

- (n) Regulating or prohibiting the cutting or destroying of trees or shrubs, or the making of excavations or removal of soil or quarrying; and providing for the alteration, repair and proper maintenance of buildings and compounds, for the closing of roads and bypaths and for the general protection of the surface land on any hillside where such by-laws appear to the board to be necessary for the maintenance of a water-supply, the preservation of the soil, the prevention of landslips or of the formation of ravines or torrents, the protection of land against erosion, or the deposit thereon of sand, gravel or stones;
- (o) prohibiting the lighting of fires in the top storey of a building which, by reason of its contiguity to other buildings, might be a source of danger to the latter in the event of a fire breaking out within it, and the walls of which storey do not exceed seven feet in height, or the placing of stands for lamps and candles in any position which the board may deem to be dangerous to the public safety;
- (p) regulating the rule of the road;
- (q) rendering licences necessary within the municipality—
 - (i) for persons working as job porters for the conveyance of goods;
 - (ii) for animals, vehicles, and other conveyances let out on hire for a day or part thereof; and
 - (iii) for persons impelling or carrying such vehicles and other conveyances;
- (r) prescribing the conditions subject to which such licences may be granted, refused, suspended or withdrawn;
- (s) regulating the charges to be made for the services of such job porters as aforesaid and for the hire of such animals, vehicles and other conveyances and for the remuneration of persons who impel or carry such vehicles or conveyances.

I—Sanitation and prevention of disease

- (i) Rendering licences necessary for using premises within bazars as stables or cow-houses or as accommodation for sheep, goats and fowls;
- (j) preventing overcrowding in houses and inhabited sites; and

J—Miscellaneous

- (i) providing for the registration, generally or within particular months, of persons entering or leaving the municipality.

Section 298 (2)-F and G.—Bye-laws framed under Section 298 (2)-(F) cannot be made applicable even to areas within one mile outside municipal limits, unless the limits are extended by the State Government¹; The word "regulation" in clause (d) include the power to make bye-laws and to require the taking out of licences for the establishment or continuance of the things and business mentioned in that clause. Apart from this the Board has power under the provisions of head G also to make bye-laws with reference to "offensive trades." Further Section 298 (1) is compre-

1. *Insam Baksh v. Emperor*, 1935 A 903=36 Cr L J 1481.

hensive enough to empower the Board to promulgate the necessary bye-laws, in the interests of the public, including the owners of and workers in all mills and factories etc.¹.

The board has powers to make a bye-law placing a ban upon the slaughter of bulls, bullocks, cows, and calves with a view to increase the milk supply and the production of foodgrains². Where a local authority makes a law, the basis of that law is the power conferred upon it by the Act constituting it and not any implied contract. In framing a bye-law prohibiting the slaughter of bulls, bullocks, cows, and calves the board does not contravene any implied contract between it and the butchers or hide merchants³.

Section 298 (a) H (b).—The Board is competent to make by-law that no motor car or lorry plying for hire shall be allowed to halt or run for the purpose of searching passengers except at stands fixed for the purpose⁴.

Section 298 (a) —H (c).—The Act recognises licence fees as some thing different from taxes, and a license fee may be imposed and fixed by bye-law. There is no inconsistency between demanding a tax for the use of motor car for private purposes and a further license fee for its use when plying for hire⁵. But this provision would not apply if licence fee is chargeable under Hackney Carriage Act⁶. A tax is in the nature of a compulsory exaction of money, imposed for public purposes to meet the general expenses of the state without reference to any special advantage to be conferred upon the payer of the tax, but a licence fee is levied for some special service rendered or some special work done for the benefit of those from whom the payments are demanded. A bye-law levying a licence fee of Rs. 500 per year on every brick kiln, but not incurring any expenditure for purposes of brick kiln, the levy cannot be said to be justified⁷.

Section 298-H (e).—A bye-law, which prohibits public prostitutes from residing within the municipal limits except certain streets is not necessarily invalid. The bye-law must, however, be of general and universal application, and should not make any exception in favour of any particular group or class of prostitutes⁸. The prohibition must be aimed against the residence of public prostitutes in general and not the residence of any individual prostitute or class of prostitutes⁹. The prohibition may be against residence in a specified street or area, but no bye-law can be made prohibiting them from residing in the whole of the municipal area with the exception of a certain specified part¹⁰.

Public Prostitute—Meaning—A public prostitute is a woman who usually and generally offers her person to sexual intercourse for hire and who openly advertises and acknowledges her occupation by word of mouth, deportment or conduct¹¹.

Section 298-J (c).—If a person is prosecuted for the breach of a bye-law made by the Board, by making a Chabutra on Nazul land, without the permission of the Board, the prosecution would not be bad even if it turns out to be the land belonging to the Board¹².

Section 298-J (d).—A bye-law framed under Section 298-J (d) is not intended to enable a Board to raise revenue by taxing trade, and will be unlawful if the fee levied is so exorbitant and excessive as to make the bye-law itself unreasonable¹³. This section has nothing to do with fairs and exhibitions and hence will not authorise a Notified Area Committee to make bye-laws relating to fairs etc.¹⁴.

A bye-law requiring weighmen to take out licences, would be beyond the powers

1. *Municipal Board, Hathras v. Bolvey Narain Dutt*, 1947 A L J 217.
2. *Buddhu v. Municipal Board, Allahabad*, 1952 A 753.
3. *Haji Ahmad Raza v. Municipal Board, Allahabad*, 1952 A 711.
4. *Mewa Ram v. Municipal Board, Muttra*, 1939 A 465=1939 A L J 500 (F. B.). See also *Emperor v. F. G. Kolkhowan*, 1934 A 413.
5. *Brij Mohan Lal v. Emperor*, 1934 A 497=1934 A L J 244=56 A 743.
6. *Mewa Ram v. Municipal Board Muttra*, 1939 A 466.
7. *Shyam Lal v. Municipal Board, Firozabad*, 1956 A 183.
8. *Mst. Nasiran v. Emperor*, 1932 A

- 537=54 A 611=1932 A L J 399. See also *Ganga Prasad v. Municipal Board, Faizabad*, 1936 O 326=1936 O W N 461.
9. *Mst. Chanchal v. Emperor*, 1932 A 70=1932 A L J 28.
10. *Mst. Mohammadi v. Emperor* 1932 A 110=1932 A L J 15=54 A I.
11. *Municipal Board, Etah v. Mst. Asghari Jan*, 1932 A 264.
12. *Suraj Bali v. Emperor*, 1942 O 438=1942 O W N 425.
13. *Ajmeri Sheikh v. Emperor*, 1934 A 39=1934 A L J 80=56 A 241.
14. *Deputy Commissioner Khari v. President Notified Area Committee*, 1949 A 683.

conferred and so invalid.¹ A bye-law intended in essence to levy an octroi or an import duty for which Town Area has no authority would also be invalid².

Section 298 (2)-J (e).—Unless the provisions of this section have been extended to a notified area, the Notified Area Committee of such area has no power to make bye-laws for the conduct or control of fairs and exhibitions etc.³

Bye-laws-Effect.—If the bye-laws have been duly made they have the same force as the law itself. It is not the function of Courts to amend bye-laws so as to make them *intra vires*; they can only decide, whether the bye-laws as they stand are within the bye-law making power conferred⁴. The jurisdiction of Civil Courts is limited by Sections 318 and 321 of the Act and the only remedy of a person aggrieved by a bye-law is by way of an appeal. A suit however would lie for an injunction to compel a Board to grant the plaintiff a licence for carrying on a particular trade, provided always that the plaintiff was prepared to carry out the conditions prescribed by the bye-laws⁵.

A person was carrying on wholesale business in vegetables. The Municipal Board framed a bye-law which provided that no person shall establish a market for wholesale transactions in vegetables except with the permission of the Board. There was however no bye-law authorising the Board to issue the necessary licence, although there was a bye-law which provided for the grant of a monopoly to a contractor to deal in wholesale transactions at the place fixed as a market. The prohibition in the first bye-law, in the absence of any provision for issuing licence, became absolute and therefore the bye-laws would be void under Article 13 (1) of the Constitution⁶.

“Wood”—Meaning.—The word “wood” is a generic term which includes timber, and cannot held to be confined to only one variety of it, namely, firewood, or wood used as fuel. All wood may not be timber, but all timber is certainly wood⁷.

299. Infringement of rules and bye-laws.—(1) In making a rule the [State Government]⁸ and in making a by-law the board with the sanction of the [State Government]⁸ may direct that a breach of it shall be punishable with fine which may extend to five hundred rupees, and, when the breach is a continuing breach, with a further fine which may extend to five rupees for every day after the date of the first conviction during which the offender is proved to have persisted in the offence⁹.

(2) The board may with like sanction prescribe a similar penalty for the breach of a rule lawfully made under the United Provinces Municipalities Act, 1873,¹⁰ and still remaining in force.

Scope and Defence.—Where a bye-law was to the effect that no person may ply the trade of a weighman without obtaining a licence, it did not mean that no transaction shall take place without the intervention of a weighman¹¹. Denatured salt is not exempt from terminal tax as salt and a person introducing it within the municipal limits without paying tax in respect of it infringes the provisions of law and would be liable for the consequences¹². The impropriety or illegality of the grounds of refusal is not a good defence in a prosecution under Section 299 of the Act¹³.

Revision.—An accused pleading guilty to the breach of a bye-law and the law point not raised before the magistrate, a revision is not maintainable¹⁴.

Where a previous Committee of the Notified Area authorised its president to sanction prosecutions it was not necessary for the new Committee to again authorise

1. *Chotey Lal v. Chairman Town Area*, I L R 1950 A 450.

2. *Trilok Chand v. State*, 1953 A 404.

3. *Ibid.*

4. *Deputy Commissioner, Kheri v. President Notified Area Committee*, 1949 A 683.

5. *Mannua v. Emperor*, 17 A L J 976=20 Cr L J 705.

6. *Rashid Ahmad v. The Municipal Board, Kairana* 1950 S C 163.

7. *Daulat Singh v. Emperor*, 1940 A 35=1939 A L J 1026.

8. *Subs.* by the A. O. 1950 for (Provl. Govt.) which had been *subs.* by the A. O. 1937 for L. G.).

9. For delegation of power to Com-

missioners, now Prescribed Authority, see not. no. 50/XI—118-H., d. Jan. 9, 1918, and p. 477 of M. M. 1952 edition.

10. Short title changed by S. 28 of U. P. Act I of 1904. *Rep.*

11. *Durjan v. Emperor*, 1935 A 655=1935 A L J 660=36 Cr L J 1292.

12. *Nanhey Lal Narotam Das v. Emperor*, 1947 O W N 517.

13. *Emperor v. F. G. Kalkhowan*, 1937 A 418=1937 A L J 388=38 Cr L J 797.

14. *Karim v. King—Emperor*, 1936 O W N 220.

its President, and the authority given by the old Committee would be effective, so long as it was not rescinded ¹.

300. Previous publication of rules, etc. made by the State Government.—(1) The power of the [State Government]² to make rules or regulations under this Chapter is subject to the condition of the rules or regulations being made after previous publication and of their not taking effect until they have been published in the [official Gazette].³

(2) Any rule or regulation made by the [State Government]² may be general for all municipalities or for all municipalities not expressly excepted from its operation or may be special for the whole or any part of any one or more than one municipality as the [State Government]² directs.

Previous Publication.—This expression means publication in the manner laid down in Section 23 of the U. P. General Clauses Act. It means that there not only has to be a publication by the Board of the draft rules prepared by it, but there must also be a publication by the State Government of the draft rules made by it and inviting objections and also of the rules as finally approved by it⁴.

301. Confirmation, etc. of regulation and by-laws made by board.—(1) The power of board to make regulations under clauses (e) to [(n)]⁵ of sub-section (1) of Section 297 [and under Section 19 of the United Provinces Primary Education Act, 1919⁶] shall be subject to the condition of the regulations not taking effect until they have been confirmed in the case of cities by the [State Government]² and in other cases by the [Prescribed Authority].⁸

(2) The power of a board to make by-laws shall be subject to the condition of the by-laws being made after previous publication and of their not taking effect until they have been confirmed⁹ by the [State Government]² and published in the [official Gazette]³.

(3) The [State Government]² in confirming a by-law or regulation and the Commissioner in confirming a regulation may make any change in its form that appears necessary.

(4) No alteration or rescission of a regulation made under clauses (e) to [(n)]⁵ of sub-section (1) of Section 297 or of any by-law by a board shall have effect unless and until it has been confirmed by the [State Government]² in the case of cities and in other cases by the Commissioner.

(5) The [State Government]² may, after previous publication of its intention, rescind⁹ any regulation or by-law which it has confirmed and the Commissioner may, in like manner, rescind any regulation which he has confirmed, and thereupon the regulation or by-law shall cease to have effect.

1. *Notified Area Committee v. Majid*, 1951 A V. R 429=1951 A L J 452.

2. *Subs.* by the A. O. 1950 for (Prov. Govt.) which had been *subs.* by the A. O. 1937 for (L. G.).

3. *Subs.* for [Gazette] by the A. O. 1937.

4. *Shri Kedar Nath v. Executive Officer, Gorakhpur*, 1956 A L J 198=1956 A W R 141.

5. *Subs.* for [(m)] by S. 16 of U.P. Act

XVII of 1934.

6. Vol. IV.

7. *Ins.* by S. 16 of U. P. Act XVII of 1934.

8. *Subs.* by U. P. Act VII of 1953.

9. For delegation of powers to Commissioners, (now prescribed authority), see not. no. 4162/XI—18-H., d. Nov. 16, 1917, and p. 477 of M.M. 1952 edition.

CHAPTER X

PROCEDURE

Municipal notices

302. Fixation of reasonable time for compliance.—Where any notice issued under any section of this Act or under any rule or by-law requires an act to be done for which no time is fixed by such section or rule or by-law, the notice shall specify a reasonable time for doing the same, and it shall rest with the court to determine whether the time so specified was a reasonable time within the meaning of this section.

303. Service of notice.—(1) Every notice or bill issued or prepared under any section of this Act or under any rule or by-law shall, unless it is in such section or rule or by-law otherwise expressly provided, be served or presented—

(a) by giving or tendering the notice or bill, or sending it by post, to the person to whom, it is addressed, or

(b) if such person is not found, then by leaving the notice or bill at his last known place of abode, if within municipal limits, or by giving or tendering the notice or bill to some adult male member or servant of his family, or by causing the notice or bill to be fixed on some conspicuous part of the building or land (if any) to which the notice or bill relates.

(2) When a notice under this Act or under a rule or a by-law is required or permitted by or under this Act, or under a rule or a by-law to be served upon an owner or occupier of a building or land, it shall not be necessary to name the owner or occupier therein, and the service thereof, in cases not otherwise specially provided for in this Act, shall be effected either—

(a) by giving or tendering the notice, or sending it by post, to the owner or occupier, or if there be more owners or occupiers than one, to any one of them, or

(b) if no such owner or occupier is found, then by giving or tendering the notice to an adult male member or servant of his family, or by causing the notice to be fixed on some conspicuous part of the building or land to which the same relates.

(3) Whenever the person on whom a notice or bill is to be served is a minor, service upon his guardian or upon an adult male member or servant of his family shall be deemed to be service upon the minor.

304. Method of giving public notice.—Subject to the provision of this Act or of any rule, regulation or by-law, in every case where public notice is to be given by a board such notice shall be deemed to have been given if it is published in some local English or Vernacular paper (if any) and posted upon a notice board to be exhibited for public information at the building in which the meetings of the board are ordinarily held.

305. Defective form.—No notice or bill shall be invalid for defect of form.

306. Disobedience to public notice or provision of Act applicable to the public.—Where, by this Act or a notice issued thereunder, the public is required to do or to refrain from doing any-

thing, a person who fails to comply with such requisition shall, if such failure is not an offence punishable under any other section, be liable on conviction by a magistrate to a fine not exceeding five hundred rupees or every such failure, and in the case of continuing breach, to a further fine which may extend to five rupees for every day after the date of the first conviction during which the offender is proved to have persisted in the breach.

307. Obedience to notice issued to individual.—If a notice has been given under the provisions of this Act or under a rule or by-law to a person requiring him to execute a work in respect of any property, movable or immovable, public or private or to provide or do or refrain from doing anything within a time, specified in the notice, and if such a person fails to comply with such a notice, then—

- (a) the board may cause such work to be executed or such thing to be provided or done, and may recover all expenses incurred by it on such account from the said person in the manner provided by Chapter VI; and further,
- (b) the said person shall be liable, on conviction before a magistrate, to a fine which may extend to five hundred rupees, and in case of a continuing breach, to a further fine which may extend to five rupees for every day after the date of the first conviction during which the offender is proved to have persisted in the offence.

Scope.—The language of the section implies that the person who fails to comply with the notice, must under the law have the power to comply with it¹. Non-compliance with the notice under Section 186 is an offence under this section even if no orders had been passed upon an application by the person for the sanction after service of notice upon him under Section 178². Section 307 (b) is applicable only to a case of a continuing breach where the offender is proved to have persisted in the offence. Obviously the conviction for such an offence must be on account of an offence which has already been committed, and for such an offence a second prosecution would be necessary³.

Notice-Defence- Powers of Court.—For a conviction under this section for disobedience of a notice issued, it must be shown that the notice was issued by the Chairman or the Executive Officer under the authority of the Board⁴. It is open to the accused to plead in defence that the notice was not issued according to law⁵. The Court is entitled to satisfy itself that the notice has been given in compliance with the provisions of the Act or some rule or bye-law⁶. However where the validity of a notice has been challenged on appeal to the Collector and the Collector holds it to be valid, and a prosecution is launched for failure to obey the notice, the validity of the notice cannot be challenged in Criminal Court⁷; but where the Collector dismissed the appeal not on merits, the Criminal Court is not precluded from considering the question whether the notice was a legal notice⁸. In a prosecution for non-compliance of a notice issued under Section 267, the Magistrate has to consider only whether the accused has failed to comply with a notice properly issued to him and has no jurisdiction to enter into merits of the Board's decision to issue the notice and reverse it⁹.

1. *Moti Lal v. Emperor*, 1939 A 701= 1939 A L J 703=41 Cr L J 5.
2. *Kausila v. Emperor*, 1938 O 199= 1938 O W N 833=39 Cr L J 862.
3. *Emperor v. Parshottam Kandu*, 1935 A 986=1935 A L J 1101.
4. *Ram Pratab Marwari v. Emperor*, 18 A L J 229=21 Cr L J 286.
5. *Ram Charan v. Improvement Trust, Lucknow*, 1925 O 546; *Brij Behari Lal v. Emperor*, 1943 A 123 (overruling 54 A 864).
6. *Baij Nath Ram v. Emperor*, 1936 A 36=1935 A L J 1260=58 A 480.

See also *Emperor v. Hansmukhi Devi*, 1947 A L W 85.

7. *Bishambhar Nath v. Emperor*, 1935 A L J 971=36 Cr L J 1036; *Emperor v. Mumtaz Husain*, 1935 O 337=1935 O W N 509 (F. B.)—Zia-ul-Hasan J dissenting.
8. *Nanak Prasad v. Municipal Board, Ras Bareli*, 1943 O 292=1943 O W N 129.
9. *Municipal Board, Bahraich v. Jwala Prasad*, 1935 O 197=11 O W N 1622.

Further Fine.—Clause (b) of Section 307 makes a person convicted liable in case of a continuing breach to a further fine per day. This further fine cannot be imposed on first conviction, but only on a second trial when it is proved that the offender has persisted in the offence¹. A magistrate ordered a person to remove a Chabutra and shed within ten days and also fined him under Section 307. He also added that on failure to remove, he would have to pay fine of Re 1/- per diem; held that the order of the magistrate indicting a further fine was bad².

A daily fine can be imposed for the period during which the accused is proved to have not complied with the orders, which means that the daily fine can be imposed only for past disobedience of an order and not for a future period e. g. till the date of the demolition of a structure.³

Type of Building-Sanction-Effect.—Where a person had obtained permission to build a number of residential quarters, the construction of the roof of one of the rooms in a spiral shape in the form of a temple and installation of a deity therein for private worship, cannot be said to be without permission and contrary to sanction⁴.

Appeal-Revision-Reference.—The findings of the lower Court based on local inspection as to the type of the building is almost conclusive⁵. Where a person is prosecuted for disobedience of a notice, an objection as to the authority of the person issuing the notice or filing the complaint, should be taken in the trial court, and cannot be entertained for the first time in appeal⁶. So also a plea not taken in the trial court, cannot be allowed to be raised on a reference under Section 438 Criminal Procedure Code⁷.

308. Liability of occupier to pay in default of owner.—

(1) If the person to whom the notice mentioned in Section 307 has been given, is the owner of the property in respect of which it is given, the board may (whether any action or other proceeding has been brought or taken against such owner or not) require the person, if any, who occupies such property or a part thereof under such owner to pay to the board instead of to the owner the rent payable by him in respect of such property, as it falls due, up to the amount recoverable from the owner under Section 307; and any such payment made by the occupier to the board shall, in the absence of any contract between the owner and the occupier to the contrary, be deemed to have been made to the owner of the property.

(2) For the purpose of deciding whether action should be taken under sub-section (1) the board may require an occupier of property to furnish information as to the sum payable by him as rent on account of such property and as to the name and address of the person to whom it is payable and if the occupier refuses to furnish such information he shall be liable for the whole of the expenses as if he were the owner.

(3) All money recoverable by the board under this section shall be recoverable in the manner provided by Chapter VI.

309. Right of occupier to execute works in default of owner.—Whenever default is made by the owner of a building or land in the execution of a work required by or under this Act to be executed

1. *Nanak Prasad v. Municipal Board, Ras Bareilly*, 1943 O 292=1943 O W N 129; *Hurmat v. Emperor*, 1932 A 109=1932 A L J 154=33 Cr L J 473; *Amir Hasan Khan v. Emperor*, 40 A 569; *Ram Lal v. Municipal Board, Budaun*, 1925 A 251=26 Cr L J 295.
2. *Munshi Lal v. Emperor*, 1933 A 657=1933 A L J 1190=55 A 603.
3. *Jagannath Achari v. Municipal Board, Faizabad*, 1950 A L J 592=1 L R

1950 A 697.

4. *Brij Behari Lal v. Emperor*, 1943 A 123 (F. B.)—Dar and Collister JJ dissenting.
5. *Brij Behari Lal v. Emperor*, 1943 A 123=1943 A L J 103.
6. *Aziz Uddin v. King Emperor*, 1943 O 390=1943 O W N 211=44 Cr L J 599.
7. *Brij Behari Lal v. Emperor*, 1943 A 123.

by him, the occupier of such building or land may, with the approval of the board, cause such work to be executed, and the expense thereof shall, in the absence of any contract to the contrary be paid to him by the owner, or the amount may be deducted out of the rent from time to time becoming due from him to such owner.

310. Procedure upon opposition to execution by occupier.—(1) If, after receiving information of the intention of the owner of any building or land to take any action in respect thereof in compliance with a notice issued under this Act, the occupier refuses to allow such owner to take such action the owner may apply to a magistrate.

(2) The Magistrate upon proof of such refusal may make an order in writing requiring the occupier to allow the owner to execute all such works, with respect to such building or land, as may be necessary for compliance with the notice, and may also, if he thinks fit, order the occupier to pay to the owner the costs relating to such application or order.

(3) If, after the expiration of eight days from the date of the Magistrate's order, the occupier continues to refuse to allow the owner to execute such work, the occupier shall be liable, upon conviction, to a fine which may extend to twenty-five rupees for every day during which he has so continued to refuse.

(4) Every owner, during the continuance of such refusal, shall be discharged from any penalties to which he might otherwise have become liable by reason of his default in executing such works.

Scope.—An order under Section 310 (2) can be made only on an application by the owner of the house concerned, for it is only then that the magistrate acquires jurisdiction to make the order. The section does not empower a magistrate to order an occupier to vacate a house; it only empowers him to require the occupier to allow the owner to execute the work necessary to comply with the notice issued by the Municipal Board to the owner¹.

Nature of Proceedings.—The proceedings under Section 310 (2) are not Criminal proceedings and as such orders passed in such proceedings cannot be sought to be revised under Sections 435 and 439 Cr. P. C. by the High Court².

When it is found that an offence under Sub-section (3) has been committed, in order to enable a court to take cognizance of the offence, the procedure laid down in Section 314 has to be followed³.

311. Recovery of cost of work by the occupier.—When the occupier of a building or land has, in compliance with a notice issued under the provisions of this Act, executed a work for which the owner of such building or land is responsible, either in pursuance of the contract of tenancy or by law, he shall, in the absence of any contract to the contrary, be entitled to recover from the owner by deduction from the rent payable by him or otherwise the reasonable cost of such work.

312. Recovery of expenses of removal by board under Sections 211, 263, 264, 265 and 278.—(1) The expenses incurred by the board in effecting any removal under Section 263 or 265 or, in the event of a written notice issued under Section 211, 263, 264, or 278 not being complied with under Section 307, shall be recoverable by sale of the materials removed; and if the proceeds of such sale do not suffice,

1. *Madho Das v. Rex*, 1949 A 738= 1949 A L J 460.

2. *Ibid.*

3. *Mohan v. State*, 1951 A W R (H. C.) 161.

the balance shall be recoverable from the owner of the said materials in the manner provided by Chapter VI.

(2) If the expenses of removal are in any case paid before the materials are sold, the board shall restore the materials to the owner thereof, on his claiming the same at any time before they are sold or otherwise disposed of and on his paying all other expenses, if any, incurred by the board in respect thereof, or in respect of the intended sale or disposal thereof.

(3) If the materials are not claimed by the owner thereof, they shall be sold by auction or otherwise disposed of as the board thinks fit, as soon as conveniently may be after one month, from the date of their removal whether expenses of the removal have in the meantime been paid or not; and the proceeds, if any, of the sale or other disposal shall, after defraying therefrom the costs of the sale or other disposal, and if necessary, of the removal, be paid to the credit of the municipal fund, and shall be the property of the board.

Scope.—Any order or direction made by a Board under the powers conferred by Section 211 cannot be challenged in a Civil Court, and the person aggrieved by any such order or direction has only a right of appeal to the officer mentioned in Section 318¹.

313. Relief to agents and trustees.—(1) When a person, by reason of his receiving, or being entitled to receive, the rent of immovable property as trustee or agent of a person or society would, under this Act, be bound to discharge an obligation imposed by this Act on the owner of the property and for the discharge of which money is required, he shall not be bound to discharge the obligation unless he has, or but for his own improper act or default might have had, in his hands funds belonging to the owner sufficient for the purpose.

(2) When an agent or trustee has claimed and established his right to relief under this section, the board may give him notice to apply to the discharge of such obligation as aforesaid the first moneys which come to his hands on behalf or for the use of the owner, and should he fail to comply with such notice, he shall be deemed to be personally liable to discharge such obligation.

Prosecutions

314. Authority for prosecution.—Unless otherwise expressly provided, no court shall take cognizance of any of the offences punishable under this Act (whereof a list is given in Schedule VIII for the purpose merely of easier reference) or under any rule or by-law, except on the complaint of, or upon information received from, the board or some person authorised by the board by general or special order in this behalf.

Complaint-Validity.—Complaint by Secretary under the authority of the president of the Board is legal². A magistrate taking cognizance of the case on a resolution of the Board does not act illegally and the trial would not be vitiated for want of a proper complaint³. Where the Municipal Board authorised the police to prosecute for certain offences including the one under Section 262, a prosecution started on the report of a police officer for an offence under Section 262 must be deemed to have been properly instituted⁴. A prosecution under the Act can be started upon information received from or complaint made by a person generally or specially authorised; an Inspector of Water Works has no such authority⁵; nor can

1. *Mohammad Basit Ali Khan v. Municipal Board, Agra*, 1947 A L J 427.

2. *Bhan Deb v. Emperor*, 1928 A 696= 1929 A L J 90.

3. *Husain v. Notified Area, Mahoba*, 1927

A 131=25 A L J 93.

4. *Mohammad Yusuf v. Emperor*, 1929 A 901=1930 A L J 202.

5. *Parshotam Das v. Emperor*, 17 A L J 354=50 I C 494.

a Tahsildar sanction a prosecution under the Act. An irregularity in the sanction cannot be cured by Section 537 Cr. P. Code ¹.

Person Authorised-Meaning.—The words “some person authorised by the Board” do not mean that the person authorised must be mentioned by name; these words are comprehensive enough to include within its purview the power to delegate authority to an officer of the Board by virtue of his office as well and not necessarily by name only and in such a case a successor in office can also act on the strength of the resolution ².

Revision.—Where no objection is taken in the trial court that the forwarding note was not signed by a person authorised on behalf of the executive officer, it cannot be taken for the first time in revision nor in appeal ³.

315. Power to compound offences.—(1) The [President]⁴ of a board or, [in municipalities in which there is an executive officer or a medical officer of health, either of these officers]⁵ with the sanction, general or special, of the [President]⁴ may, either before or after the institution of proceedings, compound an offence against this Act or a rule or by-law, except the offences described in Sections 237 (4), 242, 246, 247, 281, 285 (5) and 295 and offences against any rules made under Section 296, with reference to the matters specified in Section 29; provided that no offence shall be compoundable which is constituted by failure to comply with a written notice issued by the board or on behalf of the board, unless and until the notice has been complied with, in so far as compliance is possible.

(2) When an offence has been compounded, the offender, if in custody, shall be discharged and no further proceedings shall be taken against him in respect of the offence so compounded.

(3) Sums paid by way of composition under this section shall be credited to the municipal fund.

316. Compensation for damage to municipal property.—If through an act, neglect or default an account whereof a person shall have incurred a penalty imposed by or under this Act any damage to the property of the board shall have been caused, the person incurring such penalty shall be liable to make good such damage as well as to pay such penalty and the amount of damage shall, in case of dispute, be determined by the Magistrate by whom the person incurring such penalty is convicted, and on non-payment of such amount on demand the same shall be levied by distress, and such Magistrate shall issue his warrant accordingly.

317. Powers and duties of police in respect of offences and assistance to municipal authorities.—Every police officer shall give immediate information to the board of an offence coming to his knowledge which has been committed against this Act or against an Act referred to in clause (b) of sub-section (1) of Section 114, or against any rule made under any of the said Acts and shall be bound to assist all members, officers, and servants of the board in the exercise of their lawful authority.

Appeals from orders of board and suits against the board

318. Appeals from order of board.—(1) Any person

1. *Juggan v. Emperor*, 19 A L J 942=63

I C 447.

2. *Emperor v. Abdul Razaq*, 1941 O 720=43 Cr L J 137=16 Luck 693; *Notified Arza Committee v. Majid*, 1951 A W R 429 (H. C.)=1951 A L J 452.

3. *Swraj Bali v. Emperor*, 1942 O 438=

1942 O W N 425.

4. *Subs. for [Chairman] by S. 61 of U. P. Act VII of 1942.*

5. *Subs. for [in municipalities in which there is an executive officer, the executive officer] by S. 31 of U. P. Act V of 1932.*

aggrieved by any order or direction made by a board under the powers conferred upon it by Sections 180(1), 186, [204]¹ 205 (1), 208, 211, [212],¹ 222 (6), 241 (2), 245, 278, 285, or under a by-law made under heading G of Section 298, may within thirty days from the date of such direction or order, exclusive of the time requisite for obtaining a copy thereof, appeal to such officer as the [State Government]² may appoint for the purpose of hearing such appeals or any of them, or, failing such appointment, to the District Magistrate :

^{2a}[Provided that where a board has been superseded under Section 30 and the District Magistrate has been appointed, under clause (b) of Section 31 to exercise and perform the powers and duties of the board, the appeal shall lie to such authority as may be prescribed.]

(2) The appellate authority may, if it thinks fit, extend the period allowed by sub-section (1) for appeal.

(3) No appeal shall be dismissed or allowed in part or whole unless reasonable opportunity of showing cause or being heard has been given to the parties

Scope.—Sections 318 and 321 set up a special tribunal and give exclusive remedy and finality to the decision of the special tribunal, and may be sufficient to oust the jurisdiction of Civil Court; but the finality only operates for acts of the statutory bodies within jurisdiction and acts without jurisdiction can be challenged in Civil Courts³. Where the Board acts under cover of statutory enactment, but illegally and in excess of its statutory powers, any person aggrieved by the said act is competent to seek his remedy under the general law⁴. An order or direction made under this section is final and cannot be questioned by a Civil Court⁵. Where a Municipal Board cancels a notice served by it upon a person under Section 186 upon objection being taken by such a person, and on appeal the District Magistrate sets aside that order, a suit for declaration that the order of the District Magistrate was *ultra vires* is barred⁶. Any person aggrieved by any order or direction made by a Board under Section 211 has a right of appeal under Section 318, and cannot challenge it in a Civil Court⁷. Where on an appeal, the District Magistrate holds the notice to be regular, and a prosecution is launched under Section 307 for failure to comply with the notice under Section 185, the Criminal Court cannot go into the validity, legality and reasonableness of the notice⁸. The expression "any order or direction made by a board" does not refer to an order passed by the Board upon appeal from a notice issued by the Executive Officer—the Act provides for a second appeal to the District Magistrate⁹.

Section 321 does not apply to an order made by an Executive Officer, as that section attaches finality only to an order passed by a board under any of the sections mentioned in Section 318 and appealable under that section¹⁰.

Person aggrieved.—The expression used in the section is "any person aggrieved" and not "any party aggrieved", and therefore it cannot be said that the aggrieved person must be a party to the order appealed against. It is quite sufficient that the order must effect the person prejudicially and he must be aggrieved by it¹¹.

District Magistrate-Powers and Duties.—Under Section 318 (3) the District Magistrate should hear the parties before passing any orders¹². No question of

1. *Ins.* by s. 89 of U. P. Act VII of 1949.
2. *Subs.* by the A. O. 1950 for (Prov. Govt.), which had been *subs.* by the A. O. 1937 for (L. G.).
- 2a. *Subs.* by U. P. Act VII of 1953.
3. *Brij Behari Lal v. Emperor*, 1943 A 123=1943 A L J 103 (F. B.).
4. *Ata Kasim v. M. B. Fatehpur*, 1929 A 756.
5. *Sheu Ram v. Sone Lal and another*, 1929 A 912; *Mannu v. Emperor*, 42 A 294=18 A L J 187.
6. *Bansi Dhar v. Bishambhar Nath*, 1940 O 102=1939 O W N 1023.
7. *Mohammad Basit Ali Khan v. Municipality Board, Agra*, 1947 A 196=1947 A L J 427. See also *Municipal Board Rae Bareilly v. Suraj Bali*, 21 Luck 505.
8. *Emperor v. Mumtaz Husain*, 1935 O 337 (overruling 1932 O 306). But see *Dr. Brij Behari Lal v. Emperor*, 1943 A 123 (F. B.).
9. *Moti Lal v. Emperor*, 1939 A 701.
10. *Mohammad Ishaq v. Administrator*, 1952 A 849.
11. *Sheu Ram v. Sone Lal*, 1929 A 912; *Dr. Brij Behari Lal v. Emperor*, 1943 A 123.
12. *Sheikh Mohammad v. Sagar Mal*, 1932 A 407=1932 A L J 470=138 I C 59.

title can be decided by the Municipal Board, where it is itself a party and it could never have been contemplated that a question of title should be decided under section 318 by the District Magistrate or the Commissioner¹. Where the resolution of the Board with respect to the construction of a building is not open to objection or criticism as being opposed to any provisions of the Act or the bye-law, the District Magistrate is not competent in the exercise of his appellate jurisdiction to turn down the resolution or set aside the sanction or direct the removal of the constructions upon the mere ground that the construction in dispute affects injuriously the value and amenities of the appellant's property².

Revision.—The Court of the District Magistrate, while deciding an appeal under this section is not subordinate to the High Court and consequently no revision lies to the High Court³.

Appeal-Parties entitled.—A Board issued notices inviting objections to the application of a person to erect a temple. The objectors filed their objections, but were overruled by the Board. The objectors had a right of appeal as they were the person "aggrieved" by the order⁴.

Writ-Maintainability.—Though the existence of an adequate legal remedy is to be taken into consideration in the matter of granting prerogative writs, the powers given to the Supreme Court under Article 32 are much wider and are not confined to issuing prerogative writs only. If the remedy of appeal under this section was not adequate, a writ could be issued⁵.

319. Reference to High Court.—(1) If on the hearing of an appeal under Section 318 any question as to the legality of the prohibition, direction, notice or order arises on which the officer hearing the appeal entertains reasonable doubt, he may, either of his own motion or on the application of any person interested, draw up a statement of facts of the case and the point on which doubt is entertained, and refer the statement, with his own opinion on the point, for the decision of the High Court.

(2) On a reference being made under sub-section (1), the subsequent proceedings in this case shall be as nearly as may be in conformity with the rules relating to references to the High Court contained in Order XLVI of the first Schedule of the Code of Civil Procedure, 1908⁶, or such other rules as are made by the High Court under Section 122 of that Code.

Scope.—In a reference under this section, the District Magistrate should prepare a statement containing clear and precise findings of fact and he should also formulate the exact point of law on which he wants the opinion of the High Court⁷. And it is not open to the High Court to probe into the legality and propriety of the findings of the District Magistrate on other points about which he had made no reference⁷.

Under the section the appellate authority can make reference if there is any doubt at the time of the hearing of the appeal, and not afterwards. The appellate authority must also express its own opinion on reference⁸.

320. Costs.—(1) The court deciding the appeal shall have power to award costs at its discretion.

(2) Costs awarded under this section to the board shall be recoverable by the board as if they were arrears of a tax due from the appellant.

1. *Municipal Board, Etawah v. Ram Sri*, 1931 A 670=1933 I C 26.

2. *Abdul Qayum Khan v. City Board, Mussoorie*, 1931 A 147=1931 A L J 206.

3. *Bishambhar Nath v. Achal Singh*, 1932 A 651=1932 A L J 816=54 A 891.

4. *Baldeo Bihary v. Kailash Narain*, 1931 O 305=8 O W N 531.

5. *Rashid Ahmed v. Municipal Board Kairana*, 1950 S C 163.

6. *Mohammad v. Sagar Mal*, 1932 A 407=1932 A L J 470.

7. *Abdul Qayum Khan v. City Board, Mussoorie* 1931 A 147=1931 A L J 206.

8. *Mst. Buggan v. Abdul Karim*, 1951 A 577=1951 A W R (H. C.) 185.

(3) If the board fail to pay any costs awarded to an appellant under this section within ten days after the date of the communication of the order for payment thereof, the court awarding the costs may order the person having the custody of the balance of the municipal fund to pay the amount.

Scope.—This section provides for costs in appeals from orders of the Board, and does not apply to the case of an illegal conviction under Section 307 (b) ¹. The appellate court has a wide discretion in the matter of awarding costs ².

321. Finality of order of appellate authority.—(1) No order or direction referred to in Section 318 shall be questioned in any other manner or by any other authority than is provided therein.

(2) The order of the appellate authority confirming, setting aside or modifying any such order or direction shall be final:

Provided that it shall be lawful for the appellate authority, upon application, and after giving notice to the other party, to review any order passed by him in appeal by a further order passed within three months from the date of his original order.

Scope.—The word “question” in this section means called in question as regards its reasonableness or practicability and not challenging its legality ³. The word “authority” is sufficiently wide to cover both civil and Criminal Courts ⁴. The section says nothing about appeals. All it says is that any order or direction mentioned in Section 318 cannot be questioned in any way other than that laid down in the section, ⁵ and an order passed by the appellate court is final ⁶.

Bar of Civil Suit.—Under this section it is only those orders mentioned in Section 318 which have been legally passed that cannot be questioned. Where an order purporting to be under the section is really not so, the Civil Court’s jurisdiction is not barred. If an order refusing sanction for any work has been passed on unlawful grounds or extraneous consideration e.g. in bad faith or with corrupt motives, then it is not an order under Section 180, and in such a case the bar of Section 321 does not operate to oust the jurisdiction of Civil Court ⁷. The Civil Court has jurisdiction to examine into cases where the provisions of the Act have not been complied with ⁸. Where the notice under Sections 185 and 211 has been issued by the executive officer in view of the provisions of Sections 60 and 61 and of Schedule 11, the bar of Section 321 does not arise ⁹. A suit for injunction on the ground of personal nuisance is not barred ¹⁰. Notice on husband to demolish building; a suit by wife that it belonged to her and was not liable to be demolished is not barred ¹¹. But where an order for demolition was passed by the Board under Section 186 and no appeal is preferred, the plaintiff’s suit for injunction in a Civil Court would be barred ¹².

A direction by the District Magistrate, in deciding an appeal, that the appellant should file a civil suit will not confer jurisdiction on Civil Court ¹³.

Criminal Court-Jurisdiction.—It is open to a person prosecuted under Section 307 to impeach the validity of a notice or direction under Section 186 upon any

1. *Yusuf Husain v. Emperor*, 1932 O 606=9 O W N 870.

2. *Baldeo Behari v. Kashi Narain*, 1931 O 305=8 O W N 531.

3. *Kashmiri Lal v. Emperor*, 19 A L J 541=43 A 644.

4. *Emperor v. Mumtaz Husain*, 1935 O 337=1935 O W N 501.

5. *Mathura Prasad v. Emperor*, 1942 A 441=44 Cr L J 84=1942 A L J 591.

6. *Sheikh Jorahawan v. Municipal Board, Gorakhpur*, 1926 A 18; *Nawab Jan v. Notified Area Committee, Auraiya*, 1948 A 273=1948 A L J 309=1948 O W N 258; *Meerut M. B. v. M. R. Samuel*, 1949 A 750 But see *Mahadeo Prasad Bakkal v. Jamila Khatoon*, 7

O W N 396.

7. *Mahadeo Prasad v. U. P. Government*, 3 D. L. R. (A) 51=1949 A 56=1948 A L J 543.

8. *The Municipal Board, Lucknow v. Kallu*, 1948 O W N 224.

9. *Municipal Board, Moradabad v. Habib ullah*, 1939 A 383=1939 A L J 332; *Mohammad Ishaq v. Administrator*, 19 2 A 849.

10. *Mo nuddin v. Abdus Samad*, 1939 A 599=1939 A L J 917=186 I C 99.

11. *Town Area, Mandha v. Mst. Mangha*, 1933 A 592=1933 A L J 960.

12. *Municipal Board, Jhansi v. Bhajan*, 1937 A 444=1937 A L J 401.

13. *Maiku v. Ram Lal*, 5 D L R (All) 18.

ground which may be strictly referable to the terms and requirements of Section 186 but not otherwise, Section 321 is no bar ⁴.

322. Suspension of orders passing under Section 318 pending decision of appeal or civil suit regarding the subject of appeal or civil suit.—[Where an order or direction referred to in Section 318 is subject to appeal and an appeal has been instituted against it, or a civil suit has been instituted in respect thereof, all proceedings to enforce such order and all prosecutions for a breach thereof, may, by order of the appellate authority or of the Civil Court, as the case may be, be suspended pending the decision of the appeal or the civil suit, and if such order is set aside on appeal or by the decision of the Civil Court, disobedience thereof shall not be deemed to be an offence.]

323. Appeals from certain orders of a court.—Every order of forfeiture under Section 201 and every order under Section 302 or Section 258 shall be subject to appeal to the next superior court to that by which the order was passed, but shall not be otherwise open to appeal or revision.

324. Disputes as to compensation payable by board.—(1) Should a dispute arise touching the amount of compensation which the board is required by this Act to pay, it shall be settled in such manner as the parties may agree, or in default of agreement by the Collector, upon application made to him by the board or the person claiming compensation.

(2) Any decision of the Collector awarding compensation shall be subject to a right of the applicant for compensation to require reference to District Judge in accordance with the procedure set forth in Section 18 of the Land Acquisition Act, 1894².

(3) In cases in which compensation is claimed in respect of land the Collector and the District Judge shall, as far as may be, observe the procedure prescribed by the said Act for proceedings in respect of compensation for the acquisition of land acquired for public purposes.

Scope.—The section has no application to a suit by a lessee for damages against a contractor, preventing the lessee from using the land leased by stocking building materials on it ⁵.

325. Decision of disputes between local authorities.—(1) Should a dispute arise between a municipal board and any other local authority on any matter in which they are jointly interested, such dispute shall be referred to the [State Government]³ whose decision shall be final.

(2) The [State Government]³ may regulate by rule made under Section 296 the relation to be observed between boards and other local authorities in any matter in which they are jointly interested.

326. Suits against board or its officers.—(1) No suit shall be instituted against a board, or against a member, officer or servant of a board, in respect of an act done or purporting to have been done in its or his official capacity, until the expiration of two months next after notice in writing has been, in the case of a board, left at its office, and in the case of a member, officer or servant, delivered to him or left at his office or place of abode, explicitly stating the cause of action,

1. Subs. by S. 90 of U. P. Act VII of 1949.

2. U. C. A. Vol. III, p. 469.

3. Subs. by the A. O. 1950 for [Provl. Govt.] which had been subs. by the A. O. 1937 for [L. G.].

4. *Brij Behari Lal v. Emperor*, 1943 A 123 = 1943 A L J 103 (F. B.) (overruling I L R 1939 A 875 = 1939 A 701; 1936 A L J 805 = 1936 A 56 = 58 A 480; 54 A 864.

5. 1922 A 477 = 43 A 614 (F. B.).

the nature of the relief sought, the amount of compensation claimed and the name and place of abode of the intending plaintiff and the plaintiff shall contain a statement that such notice has been so delivered or left.

(2) If the board, member, officer or servant shall, before action is commenced, have tendered sufficient amends to the plaintiff, the plaintiff shall not recover any sum in excess of the amount so tendered and shall also pay all costs incurred by the defendant after such tender.

(3) No action such as is described in sub-section (1) shall, unless it is an action for the recovery of immovable property or for a declaration of title thereto, be commenced otherwise than within six months next after the accrual of the cause of action.

(4) Provided that nothing in sub-section (1) shall be construed to apply to a suit wherein the only relief claimed is an injunction of which the object would be defeated by the giving of the notice or the postponement of the commencement of the suit or proceeding.

Section 326 (1)—Scope.—According to a proper reading of the sub-section, a notice is needed only with regard to suits instituted in respect of an act done or purporting to have been done. It does not contemplate a case in which a suit is instituted in respect of an act which is threatened to be done in future. A suit to restrain the Municipal Board by an injunction from levying any distress on plaintiff's property is in respect of an act which is threatened to be done in future and so Section 326 (1) would not apply, the proviso to the section would apply to such a case¹. Where a suit is for money due for work done to a municipality under a contract, it is governed by the general law of limitation of three years and this section has no application².

Section 326 (3) Scope.—Where the suit is one in respect of an act done by an officer of the Board in his official capacity, the provisions of this Section apply³. The important test is whether officer proposed to act in his official capacity⁴.

Notice.—Notice is not necessary where the reliefs claimed are those of an injunction and come within the last proviso⁵. Notice is necessary where the Chairman of the Board acting as such makes a report as a result of which a clerk of the Board is prosecuted and he files a suit for damages for malicious prosecution⁶. A notice mentioning that plaintiff claimed right of ownership and is in possession but the claim of adverse possession not specifically raised, the notice is not bad⁷. But it is not sufficient compliance in a suit against both Municipal Board and Tax Inspector to serve a notice on the Board alone⁸. If in a suit for injunction a declaration of title is also claimed, a notice under this section would be necessary⁹.

Limitation.—The limitation under the section is six months. If the suit is delayed beyond six months, it is barred¹⁰. In computing this period, the plaintiff is entitled to deduct the period of two months of notice¹¹. In a suit for declaration that a certain bye-law is illegal, the cause is a recurring one¹². Suits on contracts are

1. *The Municipal Board, Mathura v. Dr. Radha Ballabh*, 1 L R 1949 A 651.

2. *Ramnak Ali v. Municipal Board, Unao*, 1947 O W N 212=1947 O A 78; *Ram Narain v. Municipal Board, Muttra*, 1938 A 540=1938 A L J 891. But see *Municipal Board, Lucknow v. S. C. Deb*, 1932 O 193. But see *Dargahi Lal Nigam v. Cawnpore Municipal Board*, 1952 A 382 and *Haji Ahmad Raza v. Municipal Board, Allahabad*, 1952 A 711 (F. B.).

3. *Govind Deoji v. Municipal Board, Brindaban*, 1938 A 110=1937 A L J 1358.

4. *Habib-ur-Razzaq v. Ram Sarup*, 1935 A 31=1934 A L J 1149.

5. *Mohammad Ekram Khan v. Mirza Mohammad Baqar*, 1935 A 106.

6. *Habibur Razzaq v. Ram Sarup*, 1935 A 31=1934 A L J 1149=152 I C 393.

7. *Municipal Board, Lucknow v. Kallo*, 1949 O 32=23 Luck 283.

8. *Jokhu v. Municipal Board, Banaras*, 1936 A 66=1937 A L J 1286.

9. *Municipal Board, Banaras v. Gajodhar*, 16 A L J 793.

10. *Habibur Razzaq v. Ram Sarup*, 1935 A 31.

11. *Ramnak Ali v. Municipal Board, Unnao*, 1917 O W N 212=1947 O A 78 (C C).

12. *Jagannath v. Municipal Board, Saran*, 1939 A 337=1939 A L J 168.

covered by three years limitation¹. A suit to recover compensation for tortious acts committed by the Board would be governed by six months limitation². To a suit for a declaration that the plaintiff has a right to collect carcasses of dead animals is covered by Section 326³. "Act" includes "omission" and a suit on such omission must be brought within six months⁴. Once limitation begins to run the mere fact that another attempt is made to get the decision altered does not give a fresh starting point of limitation⁵.

Notice-Waiver.—Where notice of suit is waived, the plea of want of notice cannot be raised⁶.

Libel-Notice.—A municipal officer who makes comments amounting to libel and does so in his official capacity must be given notice under Section 326 and the suit must be filed within six months⁷.

[326-A. Civil Court not to grant temporary injunctions in certain cases.—No civil court shall in the course of any suit grant any temporary injunction or make any interim order—

⁹[(a) restraining any person from exercising the powers or performing the functions or duties of a President or Vice-President of a board, or by chairman of a committee or sub-committee of a board, of a member, officer or servant of a board, or of a committee or sub-committee of a board, on the ground that such person has not been duly elected, nominated or appointed as such president, vice-president, chairman, member, officer or servant ; or]

⁸[(b) restraining any person or persons or any board or committee or sub-committee of a board from holding any election, or from holding any election in any particular manner.]

CHAPTER XI

Supplementary

327. Delegation of powers by the State Government.—The [State Government]¹⁰ may, by notification, delegate¹¹ to the [Prescribed Authority]¹² in respect of any specified municipality or municipalities [within his or its jurisdiction]¹³ any one or more of the powers vested in it by this Act, with the exception of the powers detailed in Schedule VII.

328. Facility for inspection of minute books and assessment lists.—The minute books and assessment lists of the board shall

1. *Municipal Board, Agra v. Ram Kishan*, 1933 A 785=1933 A L J 1414. But see *Abdul Wahid v. M. B. Allahabad*, 21 A L J 161. But see *Dargahi Lal Nigam v. Cawnpore Municipal Board*, 1952 A 382 (F. B.) and *Haji Ahmad Raza v. Municipal Board, Allahabad*, 1952 A 711 (F. B.).

2. *L. Makhan Lal v. Municipal Board of Agra*, 18 A L J 180.

3. *Jhunwa v. Municipal Board, Dhampur*, 45 A 267=21 A L J 101.

4. 1928 A 136=25 A L J 1038; *Dargahi Lal Nigam v. Cawnpore Municipal Board*, 1952 A 382 (F. B.), *Haji Ahmad Raza v. Municipal Board, Allahabad*, 1952 A 711 (F. B.).

5. 1925 A 276=23 A L J 23.

6. 1924 A 467.

7. 1930 A 704=1930 A L J 1080.

8. S. 326-A add. by S. 2 of U. P. Act IV of 1934.

9. Subs. by Act I of 1955.

10. Subs. by the A. O. 1950 for (Provl. Govt.) which had been subs. by the A. O. 1937 for (L. G.).

11. For delegation of powers see notes. no. 2400 XI—27H., d. July 2, 1916, no. 2082/XI—70H., d. June 11, 1917, no. 4162/XI—18H., d. Nov. 16, 1917, no. 4300/XI—70H., d. Nov. 30, 1917, no. 50/XI—118H., d. Jan. 9, 1918, no. 1103/XI—504-E., d. June 5, 1918, no. 1108/XI—504-E., d. June 5, 1918, no. 706/XI—118H., d. April 2, 1919, and no. 1113/XI—504E., d. June 5, 1919, and no. 3187/XI—A., d. May 5, 1949, and pp. 476-478 of M. M., 1952 edition.

12. Subs. for [Commissioner] by S. 60 of U. P. Act VII of 1949.

13. Subs. by U. P. Act VII of 1953.

be open to inspection free of charge by any tax-payer or elector under conditions to be prescribed by by-law in this behalf.

329. Provision for publicity of rules, regulations, and by-law.—Books containing every rule, regulation and by-law shall be kept in the municipal office and shall be open, during the ordinary hours of business, to inspection free of charge by any person and shall be for sale to the public at such office at a reasonable price to be specified by by-law in this behalf.

330. Mode of proof of municipal records.—A copy of any receipt, application, plan, notice, order, entry in a register or other document in the possession of a board shall, if duly certified by the legal keeper thereof or other person authorized by by-law in this behalf, be received as *prima facie* evidence of the existence of the entry or document and shall be admitted as evidence of the matters and transactions therein recorded in every case, where and to the same extent as, the original entry or document would, if produced, have been admissible to prove such matters.

331. Restrictions on the summoning of municipal servants to produce documents.—No municipal officer or servant shall in any legal proceeding to which a board is not a party be required to produce any register or document the contents of which can be proved under the preceding section by a certified copy, or to appear as a witness to prove the matters and transactions recorded therein unless by order of the court made for special cause.

332. Inspection of municipal works and registers by members.—With the previous sanction of the [President]¹ any member of a board may, inspect any work or institution, constructed or maintained, in whole or part, at the expense of the board, and any register, book, accounts or other document belonging to, or in the possession of, the board.

333. Exercise by District Magistrate of Board's power pending establishment of board.—[When a new municipality is created under this Act, the District Magistrate, or other officer, or committee, or authority appointed by him in this behalf, may, until a board is established, exercise the powers and perform the duties and functions of the board, and he or it shall, for the purposes aforesaid, be deemed to be the board:]

Provided always that the District Magistrate or such other officer, or committee, or authority shall, as early as possible, make preliminary arrangements for the holding of first elections and generally of expediting the assumption by the board of its duties when constituted.]²

Scope.—The Notified Area of Bardut was converted into a Municipality. Before it, the Tahsildar sanctioned the prosecution of certain persons under Section 185.

1. Subs. by U. P. Act I of 1955.

2. Subs. for S. 333 by S. 2 of U. P. Act XI of 1950.

S. 3 of U. P. Act XI of 1950 runs as follows:

"For the removal of doubts it is hereby declared that, in the case of any municipality created on or after April 1, 1949, any orders made, actions or proceedings taken, directions issued or jurisdictions exer-

cised by the District Magistrate or the officer appointed by him in that behalf in the purported exercise of the powers under or in pursuance of Section 333 of the Principal Act shall be deemed to be as good and valid in law, as if such orders, actions, proceedings, directions and jurisdictions had been made, taken, issued or exercised under the said section as amended by this Act."

Provisions of this section did not authorise the Tahsildar to sanction a prosecution and therefore the conviction was illegal.¹

333-A. Consequences of establishment of a municipality in place of town area or notified area.—[Where a municipality is created in place of a town area or notified area, the following consequences shall, notwithstanding anything contained in Section 34 of the Town Areas Act, 1914, or Section 339 of this Act, follow as from the date of creation of the municipality :

- (i) all taxes, fees, licences, fines or penalties imposed, prescribed or levied on the date immediately preceding the said date, by the Town Area Committee or the Notified Area Committee, as the case may be, be deemed to have been imposed, prescribed or levied by the board under or in accordance with the provisions of this Act and shall, until modified or changed, continue to be so realizable ;
- (ii) any expenditure, incurred by the Town Area Committee or the Notified Area Committee, on or before the date immediately preceding the said date from its funds shall continue to be so incurred by the board as if it was an expenditure authorized by or under the said Act ;
- (iii) all property including the rights or benefits subsisting under any deed, contract, bond, security or choses-in-action vested in the town area or notified area, as the case may be, on the date immediately preceding the said date shall be transferred to and vested in and enure for the benefit of the board ;
- (iv) all liabilities whether arising out of contract or otherwise, which have accrued against the Town Area Committee or the Notified Area Committee and are outstanding on the date immediately preceding the said date, shall thereafter be the liabilities of the board ;
- (v) the fund of the town area or the notified area and all the proceeds of any unexpended taxes, tolls, fees or fines, levied or realized, as the case may be, by Town Area Committee or the Notified Area Committee shall be transferred to and form part of the municipal fund of the municipality ;
- (vi) all legal proceedings commenced by or against the Town Area Committee or the Notified Area Committee and pending on the date immediately preceding the said date, shall be continued by or against the board ;
- (vii) any officer or servant, who, on the date immediately preceding the said date, was employed by the Town Area Committee or the Notified Area Committee in full time employment shall be transferred to and become an officer or servant of the board as if he had been appointed by it under the provisions of this Act ; and
- (viii) anything done or any action taken, including any appointment or delegation made, notification, order or direction issued, rule, regulation, form, by-law or scheme framed, permit or licence granted or registration effected under the provisions of the United Provinces Town Areas Act, 1914, or the provisions of this Act as applied to the noti-

fied area shall be deemed to have been done or taken under the corresponding provisions of this Act and shall continue in force accordingly unless and until superseded by anything done or any action taken under this Act.]¹

334. Repeals and savings.—(1) The enactments specified in Schedule IX are repealed.

(2) Provided that this repeal shall not affect—

- (a) the validity of any appointment, or any grant or appropriation of money or property, or any tax or impost, made or imposed under any enactment hereby repealed, or
- (b) the terms of remuneration, or right to pension, of any officer appointed before the commencement of this Act.

335. Saving as to Indian Railways Act, 1890.—Nothing in this Act shall affect any provision of the Indian Railways Act, 1890, or any rule made under that Act.

336. Validation of acts done before commencement of Act.—All acts done before the commencement of this Act which could have been lawfully done if this Act had been in force shall be deemed to have been lawfully done.

²[**336-A. Power of Government to make provision for the transition period.**—Whereas difficulty may arise in relation to the transition from the provisions of this Act as existing prior to their amendment by the U. P. Municipalities (Amendment) Act, 1949, to the provisions as amended by the said Act.

And whereas the nature of these difficulties and of the provisions which should be made for meeting them, cannot at the date of the passing of the said Act, be fully foreseen :

Now, therefore, for the purpose of facilitating of transition the ³[State Government] may by order published in the official Gazette—

- (a) direct that this Act shall during such limited period, as may be specified in the order, have effect subject to such adaptations, alterations and modifications as may be so specified, and
- (b) make such other temporary provisions for the purpose of removing any such difficulty, as may be specified in the order :

Provided that the ³[State Government] shall not exercise the powers conferred by this section after the establishment of the first boards formed under this Act as amended by the said Act.

Scope.—The legislature has powers to retrospectively validate orders, which at the time that they were passed were invalid⁴. As to the powers of delegated legislation See *Suryapal Singh v. The Government of the State of U. P.*, 1951 A L J 365 (F. B.).

CHAPTER XII

Notified Areas

337. Constitution of notified areas.—(1) The [State

1. Add. by S. 2 of U. P. Act XI of 1950. See, also S. 9 of this Act, which makes provision for the validation of proceedings and acts.
2. Add. by S. 90 A of U. P. Act VII of

- 1949.
3. Subs. by the A. O. 1950 for [Provl. Govt.].
4. *Ram Niwas v. The State of U. P.*, 1951 A L J 620.

Government]¹, by notification, may declare² that in respect of any local area, other than a municipality, town area or agricultural village, it is desirable to make administrative provision for some or all of the matters described in Sections 7 and 8 by extending thereto the provisions of this chapter.

(2) A local area in regard to which a notification has been issued under sub section (1) is hereinafter called a notified area³.

(3) The decision of the [State Government]¹ that a local area is not an agricultural village within the meaning of sub-section (1) of this section shall be final and conclusive, and a publication in the [official Gazette]¹ of a notification declaring such area to be a notified area shall be conclusive proof of such decision.

Scope.—Notified area means a local area in regard to which a Govt. notification has been issued, and the decision of the local Govt. that a local area is not an agricultural village is final and conclusive². A Zamindar cannot claim any right in the soil and cannot bring a suit for possession of a house situated in a Part which is included in the notified area³. The declaration however does not divest the proprietary rights⁷.

338. Extension of enactments to imposition of taxes in, and constitution of committees for notified areas.—(1) The [State Government]⁸ may by notification⁹—

(a) apply or adapt to a notified area the provisions of any sec-

1. Subs. by the A. O. 1950 for [Provl. Govt.] which had been subs. by the A. O. 1937 for [L. G.].

2. See not. No. 2118/XI—70H., d. July 6, 1917, and p. 1 of the U. P. Notified Area Manual.

3. For list notified areas, see pp. 91—92 of *ibid.*

4. Subs. for [Gazette] by the A. O. 1937.

5. *Mohammad Said Khan v. Mangal Prasad Dube*, 1934 A 175.

6. *Pangwara v. Ratan Singh*, 1938 A 129 = 1938 A L J 69 = 1938 R D 228.

7. *Kanhajia Lal v. Hasaid Ali*, 1940 O 164 = 1940 O W N 4 2.

8. Subs. by the A. O. 1950 for (Provl. Govt.) which had been subs. by the A. O. 1937 for (L. G.).

9. (a) for application of certain ss. of the Act, see nots. 72-M. C./XI—70H., d. June 6, 1917, No. 2033/XI—70H., d. June 11, 1917, and No. 2127/XI—70H., d. June 22, 1917, and pp. 3—83 of the U. P. Notified Area Manual.

(b) for rules relating to employees, see nots. Nos. 2033/XI—70H., d. June 11, 1917; No. 2214/XI—70H., d. July 6, 1917, No. 1350/XI—129, d. June 12, 1925 and No. 1710/XI—70H., d. June 25, 1926, and pp. 102—104 of *ibid.*

(c) for rules re. notified area property, see not. No. 2033/XI—70H., d. June 11, 1917, and pp. 109—111 of *ibid.* see also the Nazul Manual.

(d) for rules relating to public works, see nots. No. 2033/XI—70H., d. June 11, 1917, No. 463/XI—187N., d. Feb. 6, 1931, No. 3138/XI—175N., d.

Oct. 30, 1931, and No. 632—VII/XI—175N., d. May 14, 1932, and pp. 111—124 of *ibid.*

(e) for rules re. distress warrants and channel of correspondence, see nots. No. 2033/XI—70H., d. June 11, 1917 and No. 1569/XI—1H., d. June 16, 1925, and pp. 124—127 of *ibid.*

(f) for transfer of functions under the Cattle Trespass Act, 1871, see not. No. 755/XI—728C., d. Mar. 8, 1904, and p. 127 of *ibid.*

(g) for rules re. impounding of cattle by officers of Govt. see nots. No. 2033/XI—70H., d. June 11, 1917, and No. 832/XI—70H., d. May 26, 1920, and p. 127 of *ibid.*

(h) for proceedings and budgets, see Resolution No. 1105, d. Mar. 21, 1901, and p. 128 of *ibid.*

(i) for rules re. elections, see nots. No. 19/XI—11N., d. Jan. 5, 1922, as subsequently amended and pp. 93—102 of *ibid.*

(j) for extension of the U. P. Prevention of Adulteration Act, 1912, (U. P. Act VI of 1912), see pp. 130—131 of *ibid.*

(k) for rules re. establishment for and maintenance of water-works or drainage works, see not. No. 4685/XI—198N., d. Jan. 7, 1933, and pp. 132—135 of *ibid.*

(l) for model rules, by-laws and regulations, see pp. 137—183 of *ibid.*

(m) for account rules, see not. No. 1129/XI—503-E., d. June 7, 1918, No. 661/XI—503-E., d. April 13, 1921, & No. 2530/XI—173N., d. Aug. 28, 1930, and pp. 189—244 of *ibid.*

tion of this Act ; or of any Act, which may be applied to a municipality, or part of such section, or any rule, regulation or by-law in force or which can be imposed in a municipality under the provisions of this or any other Act, subject to such restrictions and modifications, if any, as it may think fit⁴ ;

(b) impose, in the whole or a part of such area, any tax which might be imposed therein under the provisions of this or any other Act, if the said area were a municipality⁴ ;

(c) fix the number of persons who shall form a committee for the purposes of the assessment and recovery of a tax imposed under clause (b) and in order to arrange for the due expenditure of the proceeds of such tax, and for the preparation and maintenance of proper accounts, and generally for enforcing the provisions of any section or rules, regulations or by-laws applied or adopted under clause (a).

(2) A committee appointed under clause (c) of sub-section (1) shall consist of three or more members to be appointed by the [Prescribed Authority]¹ or elected in the manner prescribed by this Act, or by rules or partly so appointed and partly so elected as the [State Government]² may by general or special order prescribe.

(3) The proceeds of a tax levied in a notified area under this section may be expended in any manner in which the municipal fund of such notified area might be expended if the notified area were a municipality.

(4) For the purposes of any enactment which may be extended to notified area the committee appointed for such area under clause (c) of sub-section (1) shall be deemed to be a board under this Act and the area to be a municipality.

Note.—See *Mani Ram v. State*, 1952 A 40 (F. B.). and *Notified Area Committee Anupshahr v. Majid*, 1951 A W R 429.

339. Application of funds of areas ceasing to be notified areas.—When by reason of the cancellation of a notification under Section 337 a notified area ceases to be notified, the unexpended proceeds of any taxes levied therein under Section 338 shall be applied for the benefit of the inhabitants of the said area as the [State Government]² may think fit.

SCHEDULE I*

THE POWERS AND FUNCTIONS OF A BOARD

[Sections 50 (e) (ii); 111 (1) and 112 (1) (a)]

1	2	3
Section	Power or duty	Remarks
* * * * *		
* * * * *		
* * * * *		
* * * * *		

1. Subs. for [Commissioner] by S. 60 of U. P. Act VII of 1949.

2. Subs. by the A. O. 1950 for (Provl. Govt.) which had been subs. by the A. O. 1937 for (L. G.).

3. Entries relating to Ss. 37, 40 (1) (a) and (43) omit. by S. 92 (1) of U. P.

Act VII of 1949.

4. For delegation of powers to now Prescribed Authority, see nots. No. 2032/XI—70-H., d. June 11, 1917, and No. 4300/XI—70-H., d. Nov. 30, 1917, and p. 145, *ibid*.

5. Del. by U. P. Act VII of 1953.

1	2	3
Section	Power or duty	Remarks
1[44-A	To elect a †(President) ² in a casual vacancy].	
[47-A	To pass a vote of non-confidence in the †(President) ²] ³	
52	To require the † ² [President] to furnish reports.	
54	To elect, or accept the resignation of a [Vice-President] ⁴ .	
57	[To appoint and employ an executive officer and a medical officer of health] ⁵ .	
58	[To punish or dismiss an executive officer and recommend the transfer of a medical officer of health] ⁵ .	
59	To appoint a person to officiate as executive officer [in cases where the vacancy exceeds two months] ⁶ .	
61	[To entertain appeals from orders of the executive officer or the medical officer of health] ⁷ .	May be delegated
63	[To require the executive officer or the medical officer of health to furnish returns, etc.] ⁸ .	
66	To appoint a secretary.	
67	To punish or dismiss a secretary.	
68	⁹ [To appoint Civil Engineer, Assistant Civil Engineer, Electrical Engineer, Assistant Electrical Engineer, Water Works Engineer, Assistant Water Works Engineer, Electrical and Water Works Engineer, Assistant Electrical and Water Works Engineer, qualified Overseer or Sub-Overseer, Secretary, Superintendent or Lady Superintendent of Education].	
69	To punish or dismiss any officer appointed under Section 68.	
70 (a)	To prohibit the employment of temporary servants for any particular work.	

1. *Ins.* by S. 32 (1) of U. P. Act V of 1932.

2. *Subs.* for [Chairman] by S. 61 of U. P. Act VII of 1949.

3. *Ins.* by S. 5 of U. P. Act II of 1926 which had been *subs.* by S. 92 (2) of U. P. Act VII of 1949.

4. *Subs.* for [Vice-Chairman] by S. 61 of U. P. Act VII of 1949.

5. *Subs.* by S. 32 (3) of U. P. Act V of 1932

*In accordance with Section 2 (1) of Uttar Pradesh Municipalities (Supplementary and Validation) Act, 1951 (U. P. Act XV of 1951) (see Appendix to this Act), during the period commencing from June 21, 1949, and until a new board is constituted by the first General Elections held under the U. P. Municipalities Act, 1916, next after the commencement of the aforesaid Act, XV of 1951 the following amendment in Schedule I shall be in operation :

In Schedule I in column I below the

figure "13" the figure "43" and in column 2 against it the words "To elect a chairman" shall be inserted.

†In accordance with Section 2 (1) of Uttar Pradesh Municipalities (Supplementary and Validation) Act, 1951, (U. P. Act XV of 1951) (see Appendix to this Act), during the period commencing from June 21, 1949, and until a new board is constituted by the first General Elections held under the U. P. Municipalities Act, 1916, next after the commencement of the aforesaid Act, XV of 1951, for the words "president" and "vice-president" wherever they occur in Schedule I, the words "chairman" and "vice-chairman" shall respectively stand substituted.

6. *Add.* by S. 32 (2) of U. P. Act V of 1932.

7. *Subs.* by S. 32 (3) of *ibid.*

8. *Subs.* by *ibid.*

9. *Subs.* by U. P. Act VII of 1953.

1	2	3
Section	Power or duty	Remarks
71	[To determine the number and salaries of the board's permanent staff]*.	
72	To appoint one person to discharge the duties of two or more officers. * * * 3.	
79(2)	To establish a provident fund.	
79(3)	To grant a gratuity, or compassionate allowance or to	
(4)&(5).	grant or purchase an annuity.	
81	To institute a suit against a member.	
82 (2) (f)	To fix the amount up to which a member may be interested in occasional sales to the board.	
94(6)	To modify or cancel a resolution.	
96(1)	To sanction contracts for which budget provision does not exist or involving a value or amount exceeding Rs. 1,000 in the case of a contract by the board of a city and Rs. 250 in any other case.	
96(2)	To empower a committee or officer or servant of the board to sanction other contracts.	
96(3)	To empower engineer to sanction contract.	
97(2)(b)	To empower engineer to execute a contract.	.. May be delegated
99	To sanction a budget and to vary or alter a budget.	
104(1)	To appoint and remove members of committees.	
104(2)	To establish and appoint the members of advisory committees	
105	To appoint persons other than members of the board to committees.	
106	To fill up vacancies in committees.	
107(1)	To appoint the *[President] ¹ of any committee.	
109	To call for returns, etc. from a committee.	
110	To appoint joint committees and to vary or rescind any written instrument by virtue of which any joint committee has been appointed.	
112	To delegate powers or duties conferred or imposed on a board.	
115	To invest or place any portion of the municipal fund in deposit.	
117	To request the [State Government] ² to acquire land.	
118	To undertake the management or control of property entrusted to it.	
119	To manage, control and administer, and hold in trust the funds of public institutions.	

1. Subs. for [Chairman] by S. 61 of U. P. Act VII of 1949.

2. Subs. by the A. O. 1950 for (Provl. Govt.) which had been subs. by the A. O. 1937 for (L. G.).

3. Entries relating to Ss. 74 and 76 (2) (b) del. by S. 32 (2) of *ibid.*

4. Subs. by S. 32 (3) of U. P. Act V of 1951.

*In accordance with Section 2 (1) of Uttar Pradesh Municipalities (Supplementary and Validation) Act, 1951 (U. P. Act XV of 1951.) (see

Appendix to this Act) during the period commencing from June 21, 1949, and until a new board is constituted by the first General Elections held under the U. P. Municipalities Act, 1916, next after the commencement of the aforesaid Act, XV of 1951, for the words "president" and "vice-president" wherever they occur in Schedule I the words "chairman" and "vice-chairman" shall respectively stand substituted.

1	2	3
Section	Power or duty	Remarks
†124	To transfer any property vested in the board ..	[May be delegated if the transfer relates to movable property] ¹ .
125	To make compensation out of the municipal fund.	
128 to 137	To take any action relating to a tax.	
141	To cause an assessment list to be prepared and to appoint a person to make the assessment list.	May be delegated.
143 (3)	To hear and decide objections, or to delegate the power to hear and decide objections.	Ditto.
147 (1)	To amend an assessment list	Ditto.
156	To permit compounding for taxes.	
157 (1) & (2)	To exempt from taxation.	
185	["To direct by a notice that the erection, re-erection or alteration of a building etc. shall be stopped or that a building etc. be altered or demolished"] ² .	
187	To establish and maintain a fire-brigade.	
189	To construct drains.	
190	To alter and discontinue municipal drains.	
196(a)	By public notice to undertake the house-scavenging or cleansing of latrines or privies, and to relinquish such undertaking.	
197(2)	To pass orders on an application for the exclusion of a house from a notice under Section 196 (a).	May be delegated.
211	To issue a notice for the removal or alteration of a projection.	
3[212-A.	To control and regulate the construction of any building or street and drains beyond municipal limits, up to a distance of two miles].	
217(1)(a)	To give a name to a street.	
219	To make, alter, divert or close a public street, to provide building sites thereon, to take steps to acquire land for such purposes and to sell or dispose of land so acquired.	
221	To declare a street a public street.	
222(1) to (3).	To define the regular line of street.	
224	To construct and alter water-works.	
237(1)	To fix premises for the slaughter of animals for sale.	
238	To fix premises for the slaughter of animals not intended for sale or slaughtered for religious purpose, and to prohibit such slaughter elsewhere,	

1. *Ins.* by S. 91 of U. P. Act VII of 1949.

†In accordance with S. 2 (1) of Uttar Pradesh Municipalities (Supplementary and Validation) Act, 1951 (*see* Appendix to this Act), during the period commencing from June 21, 1949, and until a new board is constituted by the first General Elections held under the U. P. Municipalities Act, 1916, next after

the commencement of this Act, the following amendment in Schedule I shall be in operation;

From column 3 against Section 124 the words "may be delegated if the transfer relates to movable property" shall be omitted.

2. Again *ins.* by U. P. Act VII of 1953.

3. *Ins.* by U. P. Act VII of 1953.

1	2	3
Section	Power or duty	Remarks
245(1)	[To issue a notice regarding offensive trades] ¹ .	
250(1)	To require the muzzling of dogs.	
253 (proviso).	To direct that the section shall not apply to vehicles proceeding at not more than a walking pace.	
257 (1)	To direct that roofs and external walls shall not be made of inflammable materials without the board's consent.	
259	To prohibit the stacking or collecting of inflammable materials, etc.	
269	To require the removal of a nuisance from tanks and the like when such removal involves the board acquiring or providing land.	
274(1) (b) & (c)	To appoint places for disposal of offensive matter and rubbish and to issue directions as to the time, manner and conditions of removal thereto.	
275(3)	To prescribe fees for the disposal of dead bodies of animals.	
278	[To issue orders regarding buildings unfit for human habitation] ¹ .	
282	To prohibit any cultivation, use of manure of irrigation injurious to health.	
285	To provide or close, or give permission for the making of, burning and burial grounds, to except private burial places from a public notice, and to give permission to use an unrecognized burial or burning ground.	
286	To set apart bathing and washing places, to prescribe conditions for the use of such places and to prohibit bathing and washing at other places.	
290(2)	To sanction execution of water-works or a work under Sections 192, 267 and 269 at the charge of the municipal fund.	
290(3)	To transfer the board's interest in appliances appertaining to a water or drainage work to the owner of a building or land.	
297	To make regulations.	
298	To make by-laws.	
299	To direct that the breach of byc-laws shall be punishable with fine.	
General	Any power, duty or function which any rule requires to be exercised, performed or discharged by the board itself by means of a resolution.	

SCHEDULE II
SCHEDULED POWERS OF EXECUTIVE OFFICER
[Section 60 (1) (d) and 61 (1) (a)]

1	2	3
Section	Nature of powers or duties	Remarks
75	To appoint permanent inferior staff.	
76	To punish or [dismiss permanent inferior staff] ² .	

1. *Ins.* by U. P. Act VII of 1953.2. *Ins.* by S. 33 of U. P. Act V of 1932.

1	2	3
Section	Nature of powers or duties	Remarks
79(1)	To pay leave allowances to officer or servant.	
142	To give public notice of the place where an assessment list may be inspected.	
143(1)	To give public notice of the time fixed for considering valuations and assessments and to give notice to owners or occupiers of property.	
143(2)	To receive objections to valuations and assessments.	
147(2)	To give notice to persons interested in an alteration proposed in an assessment list of the date on which the alteration will be made.	
148(1)	To receive notice of a building newly built, rebuilt or enlarged.	
150(2)	To exercise the option of levying the tax from the lessor.	
151(1) & (2)	To remit or refund a tax in case of a building, tenement or land remaining vacant and unproductive of rent.	
152(1)	To receive notice of the re-occupation of a building or land.	
158	To call for information affecting liability to taxation.	
166	To present bills for taxes and other dues.	
168	To cause a notice of a demand to be served.	
169	To issue a distress warrant.	
172(1) & (2)	To sell goods distrained.	
172 (3)	To receive applications for a refund and to make a refund.	
173	To apply to a magistrate for the issue of a warrant.	
176	To sue for a demand.	
178(1)	To receive a notice of the intention to erect, re-erect or make a material alteration in a building, etc.	
179(1)	To determine when information regarding such notice is satisfactory.	
179(2)	To require plans, specifications and further information.	
1[186		
191 (1)	To give permission and to prescribe conditions for the connection of private drains with municipal drains.	
191 (2)	To require that a drain made in contravention of a bye-law or of the terms of permission without permission shall be closed, etc.	Appealable.
192 (1)	To enforce a drainage connection with a public drain.	Appealable.
193	To receive applications, to call for objections, to issue orders thereon, to construct drains and recover cost of construction and compensation.	Appeal lies against an order recorded under sub-section (3).
194	To give permission for diversion of drain and to prescribe conditions for such diversion.	Appealable.
196 (c) & (d).	With the consent of an occupier to undertake house scavenging or the removal of nightsoil or other offensive matter or rubbish and to relinquish such undertaking.	

1	2	3
Section	Nature of powers or duties	Remarks.
201 (1)	To complain to a magistrate on the negligence of a customary sweeper.	
202 (1)	To complain to a magistrate of the failure of an agriculturist to provide for proper house scavenging.	
203 (1)	To receive notice of intention to make a street.	
204	[To receive application for permission to lay out and make a street] ²	
209	To give permission for projections	Appeal lies from orders refusing permission
211		
[in part] ¹		
213	To give permission for erection and repair of buildings, etc. and to issue orders regarding hoardings etc.	
214	To require hedges and trees to be trimmed.	
215	To remove, and recover the expense of removal of, or to issue a notice requiring the removal of an obstruction caused by fallen house, etc.	
216	To require the provisions of trough and pipes for rain water.	
217 (1) (b) & (c)	To affix the name of a street or a house number to a building or to require the owner or occupier to affix a number plate, and to cause or require such names and numbers to be altered.	
218	To attach posts and brackets to buildings for lamps, telegraph and telephone wire, etc.	
220	To give permission for the use or occupation of a public street or place.	
223	To provide fencing and lighting during repairs of public street, etc.	
225(1)	To require private wells, etc. to be cleansed.	
225(2)	To require a person to desist from using a private well, etc., or to close or fence the same.	Appealable.
227	To require the removal or closing of drains, latrines, etc. near a source of water supply.	Do.
229	To supply water by agreement.	
230	To charge for the supply of water	Appealable.
236	To remove or otherwise deal with unauthorized buildings over drains, etc., or to issue notice for the removal of such buildings, etc.	
240	To authorize an officer to seize flesh brought within the municipal limits in contravention of a bye-law and to issue orders as to the disposal of such flesh.	
244(1)	To seize articles exposed for sale which appear to be unfit for the consumption of man and drugs suspected of being adulterated or spent; and to produce such drugs before a magistrate.	
¹ [245 (1)]		
249	To authorize a person to destroy or confine dogs suspected to be suffering from rabies, etc.	

1. The entries relating to this section
del. by U. P. Act VII of 1953.

2. Subs. by U. P. Act VII of 1953.

1	2	3
Section	Nature of powers or duties	Remarks
250(2)	To authorize persons to destroy or confine unmuzzled dogs.	
256	To give permission for the use of public land for halting animals or vehicles.	
257(2)	To require the removal of a roof and wall, if inflammable.	Appealable.
258	To search for inflammable material and to seize any quantity in excess of the quantity permitted.	
260	To issue notices regarding dangerous quarrying and to put up hoardings and fences to prevent imminent danger.	
261	To give permission for the displacing of pavement, etc., and to recover expenses incurred by the board by reason of such displacement, etc.	
263	To require by notice buildings, etc., in a dangerous or ruinous estate to be demolished or repaired, or wells, tanks, etc., to be repaired and enclosed, and to take immediate action where the danger is imminent.	Appeal lies against an order to repair or enclose a tank.
264	To require unoccupied building or land which occasions a public nuisance to be secured or enclosed.	Appealable.
265	To give a written permission for the temporary obstruction of a street and to remove any obstruction from a street, and to recover the cost of removal.	
266	To give permission for the removal of earth, etc., from open spaces.	
267	To require provision, alteration, removal, closing, cleansing and screening of private drains, cesspools, dust-bins, latrines, etc.	Appeal lies against an order under clause (a) of sub-section (1) requiring an owner or occupier to close or remove or under clause (b) of sub-section (1) to provide a latrine, urinal, water closet, drains, cesspool, dust-bin or other receptacle for filth, sullage water, rubbish or refuse.
268	To require the provision and cleansing of latrines and urinals for factories, etc.	
269 [in part] ¹	To require the cleansing, repairing, covering, filling up or draining off of wells, tanks, etc.	Appealable.
270	To inspect drains, privies, etc., and to cause the ground to be opened.	
271	To require the cleansing of filthy buildings or lands.	
273(1)(a)	To provide receptacles and places for the temporary deposit of offensive matters.	
275(1)	To arrange for the disposal of dead bodies of animals.	

1	2	3
Section	Nature of powers or duties	Remarks
275(3) [in part] ¹	To charge and recover fees for such disposal.	
276	To give permission for and to prescribe conditions regarding the discharging of sewage, etc.	
277	To enter and inspect a building and to direct that a building be disinfected, etc.	
² [278]		
280	To remove to a hospital a cholera or small-pox patient, etc.	
283	To require an owner or occupier to clear away noxious vegetation.	
284(1)	To require that excavation, etc. made in contravention of by-laws or the conditions of a permission shall be filled up or shall be drained.	
291	To apply to the collector to recover rent of land.	
293	To charge fees for the use or occupation of immovable property vested in, or entrusted to the management of the board, and to levy or recover such charge.	
294	To charge fees for licences, sanctions and permissions.	
307	To cause a work to be executed and to recover the expenses thereof.	
308	To require an occupier to pay rent to a board instead of to the defaulting owner, and to require an occupier to furnish information regarding the rent payable by him, etc.	
309	To approve the execution of a work by an occupier.	
312	To recover the cost of removal by sale of materials removed, to restore the materials to the owner under certain conditions, or to sell them when not claimed by the owner.	
313(2)	To give notice to a trustee or an agent to apply moneys received on behalf of an owner to the discharge of obligations of the owner.	
314	To institute prosecutions by making complaints and giving information, and to authorise other persons to make such complaints and give such information.	
317	To receive information from a police officer.	

SCHEDULE III

NOTICE OF PROPOSAL TO IMPOSE TAX

[Sub-section (3) of Section 131]

Notice is hereby given to the inhabitants of the municipality of _____ that the municipal board desires to impose the tax, rate, toll, octroi or cess (as the case may be) described in the proposals appended [in lieu of the tax known as the _____] *.

Any inhabitant of the municipality objecting to the proposals or rules appended hereto may, within a fortnight from the date of this notice, send his objections in writing to the municipal board.

1. Ins. by S. 16 of U. P. Act II of 1919.

2. The entries relating to this section del. by U. P. Act VII of 1953.

*To be inserted if the tax is to be substituted for any existing tax.

PROPOSALS

[The proposals framed by the board under sub-section (1) of Section 131 are to be appended here].

RULES

[The rules prepared by the board under sub-section (2) of Section 131 are to be appended here].

Object of Notice.—The use of the form prescribed in this Schedule is clearly intended to ensure that the inhabitants of the municipality may have notice of the proposal to impose a tax, and an opportunity of objecting to the proposed tax or to the draft rules copies of which are required to be appended to the notice in that order¹.

SCHEDULE IV

FORM OF NOTICE OF DEMAND

(Section 168)

To

A B

residing at

Take notice that the municipal board of demands from the sum of

due from

on account of

(here describe the property, occupation, circumstance or thing in respect of which the sum is leviable)

leviable under

for the period of

commencing on the

day of

19 , and ending on the

day of

19 , and that if within fifteen days from the service of

this notice, the said sum is not paid into the municipal office at , or sufficient cause for non-payment is not shown to the satisfaction of the board, a warrant of distress will be issued for the recovery of the same with costs.

Dated this

day of

19 .

(Signed)

By order of the municipality of

SCHEDULE V

FORM OF WARRANT

[Sub-section (1) of Section 169]

(Here insert the name of the officer charged with the execution of the warrant).

Whereas A B of has not paid, and has not shown satisfactory cause for the non-payment of, the sum of due for the liability* mentioned in the margin for the period commencing on the day of 19 , and ending with the day of 19 , and leviable under

And whereas fifteen days have elapsed since the service on him of notice of demand for the same ;

¹ *Shri Kedar Nath v. Municipal Board*, 1956 A L J 198=1956 A W R 142.

* (Here describe the liability.)

Rs. a. p.

For service of notice
-----------------------	----	----

Dated this _____ day of _____ 19 ____.

Chairman or other officer.

Note.—It shall not be necessary to execute the warrant if the defaulter makes full payment to you before removal of his goods.

[Sub-section (4) of Section 171]

A B residing at

Dated this day of 19 .

Inventory

(Here state particulars of goods and chattels seized.)

POWERS OF THE [STATE GOVERNMENT]¹ THAT MAY NOT BE
DELEGATED

(Section 327)

Section	Powers or duties
3(1)(a)	To declare any local area to be a municipality.
3(1)(b)	To declare any municipality having a population of less inhabitants to be a city.
3(1)(c)	To define the limits of any municipality.
3(1)(d)	To include or exclude any area in or from any municipality.
3(1)(e)	To cancel any notification under any of the preceding clauses.

1. Subs. by the A. O. 1950 for (Provl. Govt.) which had been subs. by the

* A. O. 1937 for (L. G.).
(Here describe the liability.)

Section

Powers or duties

- 8(1)(n) To declare, or in the case of city to sanction the declaration of, expenditure on anything to be an appropriate charge on the municipal fund.
- 9 To prescribe by notification the number of members of a board who may be elected.
- 10 To declare that Section 9 shall not apply to a municipality, and in such case to prescribe the number of members to be nominated and the number to be elected.
- * * *
- 7[13-D] To remove a disqualification under clauses (a) and (b) of this section.
- 8[13-1] To direct that a casual vacancy be left unfilled till the next general elections].
- 22 [To appoint a Tribunal]³.
- 30 To [dissolve or supersede a board for a specified period]⁴.
- 31 To appoint a person or persons to exercise and perform the powers and duties of a board during the period of supersession.
- 34(2) To rescind or modify an order passed under this section by the [Prescribed Authority]⁷ or the District Magistrate with respect to a city.
- 35 In the case of a city to fix a period for the performance of duty and if [in part]⁵ the duty is not performed within the period so fixed, to appoint the District Magistrate to perform it and to direct that the expense of performing it shall be paid by the board.
- * * *
- 40(1) To remove a member of a board of a city.
- 40(2) To receive appeals against orders under clause (c), (d) or (e) of sub-section (1) and to cancel any such order and to reinstate member affected.
- 40(3) To remove a member who has so flagrantly abused his position as member as to render his continuance detrimental to the public interest.
- 41(4) To declare a member removed by the [State Government]¹ to be no longer ineligible for further election, co-option or nomination]⁴.
- 43(2) To declare that the election of the †President shall be held separately]⁴.
- 43(3) [To declare that the provisions of sub-section (2) of this section shall not apply to a municipality]⁹.
- * * *
- 43-B To appoint a Tribunal]¹¹.

1. Subs. by the A. O. 1950 for (Provl. Govt.) which had been subs. by the A. O. 1937 for (L. G.).

2. Entries relating to S. 12 (3) omit. by S. 93 (1) of U. P. Act VII of 1949.

3. Entries relating to Ss. 22 and 43-B ins. by S. 93 (3) *ibid*.

4. Entries relating to Ss. 30, 41 (4), 43 (2) subs. by S. 93 (2) *ibid* of which the last one had been ins. by S. 34 of U. P. Act V of 1932.

5. Ins. by S. 17 of U. Act II of 1919.

6. Entries relating to Ss. 38 (4) and 44 del. by S. 34 of U. P. Act V of 1932.

†In accordance with Section 2 (1) of Uttar Pradesh Municipalities Supplementary and Validation) Act, 1951 (U. P. Act XV of 1951) (see Appendix to this Act), during the period commencing from June 21, 1949, and until a new board is

constituted by the first General Elections held under the U. P. Municipalities Act, 1916, next after the commencement of the aforesaid Act XV of 1951, for the word "President" and "Vice-President" wherever they occur in Schedule VII the words "Chairman" and "Vice-Chairman" shall respectively stand substituted.

7. Subs. by U. P. Act VII of 1953.

8. Ins. by U. P. Act VII of 1953.

9. Subs. by S. 34 of U. P. Act V of 1932.

10. Entries relating to S. 43 (4) omit. by S. 93 (1) of U. P. Act VII of 1949, which had been ins. by S. 34 of U. P. Act V of 1932.

11. Entries relating to Ss. 22 and 43-B ins. by S. 93 (3) of U. P. Act VII of 1949.

Section	Powers or duties
	* * *1. * * *2.
[47-A	To remove the President† or dissolve the board]3.
48	To remove a †[President]4.
57	[To approve the appointment, salary and conditions of appointment of an executive officer and a medical officer of health]5.
6[57-2A	To nominate Accounts Officer and to lay down the terms and conditions of their service].
58	To entertain an appeal by an executive officer against an order of punishment or dismissal, to allow, disallow or vary such punishment or dismissal; to suspend the executive officer pending the decision of his appeal; and to transfer a medical officer of health from one board to another]7.
	* * *8.
159(3)	To approve the appointment, salary and conditions of appointment of an officiating executive officer if the term of appointment exceeds two months]9.
[60-A	To direct that in any municipality the medical officer of health and not executive officer shall exercise certain powers conferred on the executive officer]9.
11[63-B.	To direct that in any municipality the Principal Officers of the Electrical, Public Works, and Water Works Departments shall with reference to their departments exercise the power under clause (e) of sub-section (1) of Section 60].
[65	In default of his appointment by a board to appoint a person to be an executive officer or to act as executive officer and to fix the salary, contributions to provident fund or pension and other conditions appertaining to such appointment]9.

1. Entries relating to Ss. 38 (4) and 44

del. by S. 34 of U. P. Act V of 1932.
2. Entries relating to Ss. 44, 44-A (1), 44-A (3), 44-A, (4), and 45 omit. by S. 93 (1) of U. P. Act VII of 1949 of which first four had been *ins.* by S. 34 of U. P. Act V of 1932.

3. *Ins.* by S. 93 (3) of U. P. Act VII of 1949.

4. *Subs.* for [Chairman] by S. 61 of U. P. Act VII of 1949.

5. *Subs.* by S. 34 of U. P. Act V of 1932.

6. *Ins.* by U. P. Act VII of 1953.

7. *Ins.* by S. 34 of *ibid.*

8. Entries 58 (3) and (4), 65 (1) and (3) del. by *ibid.*

†In accordance with Section 2 (1) of Uttar Pradesh Municipalities (Supplementary and Validation) Act, 1951 U. P. Act XV of 1951 (see Appendix to this Act), during the period commencing from June 21, 1949, and until a new board is constituted by the first General Elections held under the U. P. Municipalities Act, 1916, next after the

commencement of the aforesaid Act, XV of 1951, for the word "President" and "Vice-President" wherever they occur in Schedule VII the words "Chairman" and "Vice-Chairman" shall respectively stand substituted.

‡In accordance with Section 2 (1) of Uttar Pradesh Municipalities (Supplementary and Validation) Act, 1951 (U. P. Act XV of 1951) (see Appendix to this Act), during the period commencing from June 21, 1949, and until a new board is constituted by the first General Elections held under the U. P. Municipalities Act, 1916, next after the commencement of the aforesaid Act XV of 1951, the following amendment in Schedule VII shall be in operation:

"In Schedule VII, the entries relating to S. 47-A shall be deleted".

9. *Ins.* by S. 34 of U. P. Act V of 1932.

10. Entries 58 (3) and (4), 65 (1) and (3) del. by *ibid.*

11. *Ins.* by U. P. Act VII of 1953.

Section	Powers or duties
[73&74	To entertain appeals from servants of boards on a monthly salary exceeding Rs. 50 or in a city Rs. 75, on their dismissal by the †[President] ¹ ² [or Chairman, Education Committee] ³ .
79(4)&(5)	To sanction grant of compassionate allowance or grant or purchase of annuity by board.
99(2)	To direct submission of budgets to specified officers.
102	To direct that budgets of specified boards shall be subject to sanction.
[104(1)	To require a board to appoint committees] ⁴ .
110	To require the appointment of joint committees.
[114A	To permit a board to raise loans] ⁵ .
115(2)	To determine the amount of security of a banker.
116	To make reservation regarding property ordinarily vesting in board.
117	To acquire land for a board under the Land Acquisition Act ⁶ .
122(1)	To declare by notification what portion of the property and liabilities of a municipal board shall be transferred to another local authority when a portion of the municipal area is placed under the control of such local authority.
Act I of 1894	
[122(2)	To declare what portion of the property and liabilities of a municipal board shall be transferred to the [State Government] ⁷ when a local area is excluded from the municipality and is not immediately placed under the control of another local authority] ⁸ .
122(4)	To decide in any case falling under sub-section (1) or (2) that it is undesirable to transfer any portion of municipal funds or liabilities.
124(2)	To sanction the transfer to [Government] ⁹ of any property vested in a board.
126	To provide police protection at fairs, etc., and determine the portion of the charges payable by a board.
[130-A	To require a board to impose a tax or to vary its rates] ¹⁰ .
133(2)	To sanction, refuse to sanction or return for further consideration proposals for taxation under Section 128, sub-section (1), clauses (i) to (xii), submitted by a city, or proposals for taxation received from any board under Section 128, sub-section (1), clause (xiii).
135(2)	To notify the imposition of a tax sanctioned by the [State Government] ¹¹ .
137(1)	To require a board to remove a defect in or relating to a tax.
137(2)	To suspend, abolish or reduce a tax.
157(3)	To exempt from taxation.
160(1)	To empower an officer to hear appeals against taxation.

1. Subs. for [Chairman] by S. 61 of U. P. Act VII of 1949.

2. Subs. by S. 31 of U. P. Act V of 1932.

3. Ins. by U. P. Act VII of 1953.

4. Ins. by S. 94 of U. P. Act VII of 1949.

5. Ins. by S. 93 (3) of *ibid*.

†In accordance with Section 2 (1) of Uttar Pradesh Municipalities (Supplementary and Validation) Act, 1951 (U. P. Act XV of 1951) (see Appendix to this Act), during the period commencing from June 21, 1949, and until a new board is constituted by the first General Elections held under the U. P. Municipalities Act, 1916, next after the commencement of the aforesaid Act XV of

1951, for the words "President" and "Vice-President" wherever they occur in Schedule VII the words "Chairman" and "Vice-Chairman" shall respectively stand substituted.

6. U. C. A. Vol. III, p. 469.

7. Subs. by the A. O. 1950 for (Provl. Govt.) which had been subs. by the A. O. 1937 for [Secretary of State in Council], 469.

8. Subs. by S. 93 (2) of U. P. Act VII of 1949.

9. Subs. by A. O. 1950 for [His Majesty].

10. Ins. by S. 93 (3) of U. P. Act VII of 1953.

11. Subs. by A. O. 1950 for (Provl. Govt.) which had been subs. by the A. O. 1937 for (L. G.).

Section	Powers or duties
[180-A	To approve construction of places of public entertainment] ¹ .
279&280	To notify infectious diseases.
296	To make rules [except rules under clauses (a), (b), and (c) of Section 153
[in part.] ²	applicable to municipalities other than cities] ² .
318	To appoint an officer to hear appeals from certain orders of board.
327	To delegate powers.
³ [336-A.	To direct that during the transition period, the Act shall have effect subject to certain adaptations, alterations and modifications].
337	To declare a local area to be a notified area.
338(1)(c)	To fix the number of members of a notified area committee.
338(2)	To prescribe whether the members of a notified area committee shall be appointed or elected or partly appointed and partly elected.
339	To determine the application of funds of areas ceasing to be notified.

SCHEDULE VIII

LIST OF OFFENCES

(Section 314)

Section	Description of offences	Fine that may be imposed
148(2)	Failure to report for entry in property assessment list a new or altered building.	Rupees 50 or ten times tax payable for three months.
152(2)	Failure to report re-occupation of vacant building paying reduced tax.	Rupees 50 or ten times tax due since occupation.
155	Evasion of octroi	Rupees 50 or ten times octroi evaded, whichever is greater.
158(2)	Failure to make correct return of liability to a tax.	Rupees 500.
185	Illegal erection or alteration of a building ..	Rupees 500.
191(2)	Illegal construction or alteration of a drain connec-	Rupees 50.
201(2)	Negligence by customary sweeper	Rupees 10.
207	Illegal making of street	Rupees 500.
210	Construction of unauthorized projection over street or drain	Rupees 250.
213(3)	Failure to obtain permission for, and to safeguard dangerous tree-cutting and building operation ..	Rupees 50 & Rs. 5 for each day that offence is repeated after conviction.
217(2)	Improper interference with street names and house numbers.	Rupees 25.
223(2)	Interference with arrangements made during street repairs, etc.	Rupees 50.
237(4)	Slaughter on unlicensed premises of animals for sale.	Rupees 20 per animal.

1. Ins. by S. 93 (3) of U. P. Act VII of 1949.

2. Ins. by S. 17 of U. P. Act II of

1919.

3. Ins. by U. P. Act VII of 1953.

Section	Description of offences	Fine that may be imposed
242	Improper feeding of animals kept for dairy purposes or used for food.	Rupees 50.
245	Failure to obey a notice prohibiting or regulating the use of premises for an offensive trade.	Rupees 200 and Rs. 40 for each day that offence is repeated after conviction.
246	Loitering and soliciting for immoral purposes ..	Rupees 50.
247(2)	Disobedience to magistrate's order prohibiting use of house as brothel.	Rupees 25 per day.
248	Importunate begging	Rupees 50.
252	Neglect of the rules of the road	Rupees 10.
253	Driving vehicles without proper lights	Rupees 20.
254	Failure to remove elephant, etc. to safe distance ..	Rupees 20.
255(1)	Allowing cattle to stray or be tethered in street ..	Rupees 20.
256	Unauthorized use of municipal land as halting place.	Rupees 20 and Rs. 5 for each day that offence is repeated after conviction.
257(3)	Unauthorised erection or continuance of inflammable constructions.	Rupees 25 and Rs. 10 for each day that offence is repeated after conviction.
261(1)	Unauthorised interference with pavements and other municipal property.	Rupees 100.
262	Dangerous discharge of firearms or fireworks and indulgence in dangerous games.	Rupees 20.
265	Obstruction of streets	Rupees 50.
266	Unauthorized digging on public land	Rupees 50 and Rs. 10 for each day that offence is repeated after conviction.
272	Failure of owner or occupier to remove offensive matter.	Rupees 50 and Rs. 5 for each day that offence is repeated after conviction.
274	Improper disposal by owner or occupier of rubbish, nightsoil, etc.	Rupees 20.
275(2)	Failure to dispose of dead animals	Rupees 10.
276	Improper discharge of sewage in or on to a street or drain.	Rupees 20.
279	Failure to give information of cholera, small-pox, etc.	Rupees 50.
281	Doing certain acts while suffering from infectious disorder.	Rupees 20.
285(5)	Burial or burning of corpses in a place not recognized as a burial or burning ground.	Rupees 50.
295	Obstruction to municipal employees	Rupees 50.
299	Contravention of rules or by-laws to the breach of which penalty is attached.	Any sum not exceeding Rs. 500 prescribed, and Rs. 5 for each day that offence is repeated after conviction.

Section	Description of offences	Fine that may be imposed
306	Disobedience to public notice or provision of the Act applicable to the public.	Rupees 500 and Rs. 5 for each day that offence is repeated after conviction.
307	Disobedience to notice issued to individual	.. Dito.
310(3)	Refusal by occupier to allow owner to take action required by notice.	Rupees 25 for each day of refusal.

SCHEDULE IX

REPEALED ENACTMENTS

[Section 334 (1)]

Year	No.	Short title or subject
<i>Acts of the [State Government]¹</i>		
1900	..	I The United Provinces Municipalities Act.
1901	..	V The United Provinces Municipalities (Amendment) Act.
1907	...	I The United Provinces Municipalities (Amendment) Act.
1891	..	I The United Provinces Water Works Act
1895	..	II The United Provinces Water Works (Amendment) Act.
1901	..	I The United Provinces Water Works (Amendment) Act.
1903	..	I The United Provinces Water Works (Amendment) Act.
1892	..	I The United Provinces Lodging House Act.
1894	..	III The United Provinces Sewerage and Drainage Act.

Note.—Sections 1 to 26 of U. P. Act No. I of 1955 are incorporated and Sections 28 and 29 of U. P. Act No. I of 1955 runs as follows:—

28. *Saving.*—Without prejudice the general application of the provisions of Section 6 of the U. P. General Clauses Act, 1904 with regard to the effect of repeal, the amendment of the Principal Act by this Act shall not affect the trial of any election petition questioning the election of any person as President of a Board at the general elections held in the year nineteen hundred and fifty-three and every such election petition shall be heard and decided as if the provisions of the Principal Act and any rules framed thereunder had not been amended by this Act.

29. *Removal of difficulties.*—(1) The State Government may for the purposes of removing any difficulties particularly in relation to the transition from the provisions of the Principal Act to the provisions of that Act as amended by this Act, by order direct that the Principal Act amended as aforesaid shall, during the period of twelve months next after the commencement of this Act, have effect subject to such adaptations whether by way of modifications, addition, or omission as it may deem to be necessary and expedient.

(2) An order made under sub-section (1) shall be laid as soon as may be before both the houses of the Legislature.

THE UTTAR PRADESH MUNICIPALITIES (SUPPLEMENTARY) ACT, 1950¹

(U. P. ACT No. V of 1951)

CONTENTS

- | | |
|---|---|
| 1. Short title and commencement.
2. Scope of Section 30 of U. P. Act II of 1916. | 3. Validation of Acts and proceedings.
4. Repeal and Saving. |
|---|---|

Authoritative English text of the Uttar Pradeshiya Municipalityon ka (Anupurak) Adhiniyam, 1950.

AN ACT

to supplement the U. P. Municipalities Act, 1916, for certain purposes.

Whereas it is expedient to supplement the U. P. Municipalities Act, 1916, for certain purposes ;

It is hereby enacted as follows :

1. Short title and commencement.—(1) This Act may be called the Uttar Pradesh Municipalities (Supplementary) Act, 1950.

(2) It shall be deemed to have come into force with effect from the twenty-third day of October, 1950.

2. Scope of Section 30 of U. P. Act II of 1916.—Whereas doubts have been expressed as to the powers of the State Government to vary, amend or enlarge the period specified in the order made under Section 30 of the U. P. Municipalities Act, 1916 (hereinafter called the said Act);

It is hereby declared for the removal of doubts that—

(a) the said section empowers and be deemed always to have empowered the State Government to vary, amend or enlarge the period from time to time, and nothing in Sections 29-A and 31 of the said Act shall be construed as limiting or abridging the said power of the State Government ;

(b) every order made before the commencement of this Act in purported exercise of any such power as is mentioned in clause (a) is and shall be deemed to be valid in law ;

And the following explanation shall be added at the end of Section 30 of the said Act and be deemed always to have formed part thereof.

“*Explanation.*—The period of supersession specified in the order may, if the State Government so considers expedient, be extended from time to time by notification.”

3. Validation of Acts and proceedings.—Any act heretofore done by any person or persons appointed under clause (b) of Section 31 of the said Act to exercise and perform the powers and duties of a Board or by any person acting under the direction of the said person or persons

For S. O. R. see *Gaz. Extra.*, d. Dec. 16, 1950.

For discussion, see L. A. Pro. d. Dec. 21, 1950, in Vol. LXXXV, p. 189, d. Jan. 17 and 18, 1951, in Vol. LXXXIX, pp. 165—228 and 234—291, d. Feb. 28, 1951, in Vol. XCI, p. 133 and L. C. Pro., d. Jan. 19 and 22, 1951, in Vol. XXI, pp. 524, 545—574, d. Feb. 26, 1951, in Vol. XXII, p. 154, respectively.

Passed in Hindi by the Uttar Pradesh Legislative Assembly on January 18, 1951 and by the Uttar Pradesh Legislative Council on January 22, 1951.

Received the assent of the Governor on January 29, 1951, under Article 200 of the Constitution of India and was published in the Gazette, Extraordinary, dated Jan. 29, 1951.

or of any officer of the Board or the State Government relating to and in connection with a Board superseded under Section 30 of the said Act shall not be questioned on the ground merely that the section conferred no power to vary, amend or enlarge the period specified in the order made thereunder and all such acts are hereby made and declared to be lawful and are confirmed as on and from the time of the performance of those acts.

4. Repeal and Saving.—The Uttar Pradesh Municipalities (Supplementary) Ordinance, 1951, is hereby repealed and the provisions of Sections 6 and 24 of the U. P. General Clauses Act, 1904, shall apply to it as if it had been an Act repealed by an Uttar Pradesh Act.

THE UTTAR PRADESH MUNICIPALITIES (SUPPLEMENTARY AND VALIDATION) ACT, 1951¹

(U. P. ACT No. XV OF 1951)

CONTENTS

- | | |
|--------------------------------------|---|
| 1. Short title and commencement. | till new boards have been established. |
| 2. Operation of U. P. Act II of 1916 | 3. Validations of acts and proceedings. |

Authoritative English text of the Uttar Pradesh Municipalities (Anupurak aur Vaidhukaran) Adhiniyam, 1951.

AN ACT

to supplement the U. P. Municipalities Act, 1916, for certain purposes and to validate actions taken.

Whereas it is expedient to supplement the U. P. Municipalities Act, 1916, and to provide for the validation of actions taken;

It is hereby enacted as follows :

1. Short title and commencement.—(1) This Act may be called the Uttar Pradesh Municipalities (Supplementary and Validation) Act, 1951.

(2) It shall come into force at once.

2. Operation of U. P. Act II of 1916 till new boards have been established.—(1) During the period commencing from the twenty-first day of June, 1949 and until a new board is constituted by the first General Elections held under the U. P. Municipalities Act, 1916 (hereinafter referred to as the Principal Act) next after the commencement of this Act, the provisions of the said Act shall, except as hereinafter excepted, have and be deemed to have had effect, in respect of any municipality existing on the day aforesaid subject to the adaptations, alterations and modifications mentioned in the Schedule :

1. For S. O. R. see *Gaz. Extra*, d. Feb. 20, 1951.

For discussion, see L. A. Pro. d. Feb. 21, 1951, in Vol. XC, pp. 132-133, d. Feb. 26, 1951, in Vol. XCI, pp. 3-24, d. March 8, 1951 in Vol. XCII, pp. 197, 215, d. August, 23, 1951, in Vol. XCV, p. 242 and L.C. Pro. d. March 27 and 28, in Vol. XXII, pp. 459 and 465-490, respectively.

Passed in Hindi by the Uttar Pradesh Legislative Assembly on March 8, 1951, and by the Uttar Pradesh Legislative Council on March 18, 1951.

Received the assent of the Governor on April 16, 1951, under Article 200 of the Constitution of India and was published in the *Gaz. Extra*, d. April 18, 1951.

Provided, however, that in all matters relating to or, in connexion with the general elections aforesaid including—

- (a) the composition of the boards and the allotment of seats to various classes and interests,
 - (b) the division of municipality into wards and the allotment of seats to each ward,
 - (c) the qualification of electors and preparation of electoral rolls,
 - (d) the qualification and nomination of candidate for election as member or President, and
 - (e) generally the conduct of elections and all other matters necessary for securing the due constitution of new boards,
- the provisions of the said Act shall, during the said period, continue to have effect as if the adaptations, alterations, and modifications made therein by this Act had not been made.

Exception.—The adaptation at item 16 of the Schedule shall cease to have effect from the commencement of this Act and the provisions of Section 6 of the U. P. General Clauses Act, 1904 shall apply thereto as if it had been an enactment then repealed by an U. P. Act.

(2) Upon the constitution of the new board referred to in sub-section (1) the adaptations, alterations or modifications mentioned in the Schedule shall in respect of such Board cease to have effect and the provisions of Section 6 of the U. P. General Clauses Act, 1904, shall apply as if these had been an enactment then repealed by an United Provinces Act, and the Principal Act shall thereupon commence to have effect as if it had not been adapted, altered or modified as aforesaid at any time whether by this Act or under any order made under Section 336-A of the Principal Act.

3. Validations of acts and proceedings.—(1) Any act or thing done including any order made, action or proceeding taken, or jurisdiction exercised under the provisions of the Principal Act or under any order made under Section 336-A of the said Act, during the period referred to in sub-section 1 of Section 2 which would have been validly and properly done or omitted under the Principal Act or the order aforesaid if the Principal Act had been adapted, altered or modified, as provided by this Act, shall be deemed to be and to have been validly and properly done, made, taken or exercised thereunder.

(2) All suits or other proceedings (other than appeals or applications for leave to appeal from final orders passed before the commencement of this Act in any suit or proceeding) questioning the validity of any act or thing done on the ground that the adaptations, alterations and modifications made by any order made under Section 336-A of the Principal Act were not valid in law shall abate and be dismissed,

SCHEDULE

(See SECTION 2)

Adaptations, alterations and modifications to be made in the U. P. Municipalities Act, 1916

1. For Section 9 the following shall be substituted :

9. Normal composition of board.—(1) Except as otherwise provided by the next following section, a board shall ordinarily consist of—

(a) *Elected members.*—such number of elected members as the State Government may prescribe by notification in this behalf; and

(b) *Chairman*.—where a person who is not a member of the board is elected or nominated as Chairman the person so elected or nominated; and

(c) *Additional members*.—in municipalities where provision is made under Section 11 for separate representation on religious grounds, a woman nominated under sub-section (2) and such other persons, if any, not exceeding in number, excluding the woman member, one-fourth of the prescribed number of elected members nominated in the manner provided by sub-section (2); and

(d) in other municipalities, a woman nominated under sub-section (3) and such other persons, if any, not exceeding in number excluding the woman member one-third of the prescribed number of elected members, nominated in the manner provided by sub-section (3).

(2) Not more than three of members who may be nominated under clause (c) of sub-section (1) shall be nominated by the State Government. The remainder shall be nominated by such bodies as the State Government may by rule constitute in this behalf:

Provided firstly, that no class for which separate representation is provided under Section 11 shall be a nominating body:

Secondly, that of the three members who can be nominated by the State Government under clause (c) of sub-section (1), one shall be selected from among the depressed classes, one shall be a representative of any special interest of the municipal area, which has remained unrepresented on the board after the general election and the third shall be a woman:

Thirdly, that none of the three members shall be a Government servant or a candidate who was defeated at the preceding general election:

Fourthly, that the proportion of Muslim and non-Muslim members, including both elected and nominated members shall not be so altered by the nomination of a woman as to convert a majority of one community into an equality with the other community.

(3) The members who can be nominated under clause (d) of sub-section (1) may be nominated by the State Government, or in the manner prescribed:

Provided that none of the members so nominated shall be a Government servant nor a candidate who was defeated at the preceding general election:

Provided further that of the members who can be nominated under this sub-section one shall be selected from among the depressed classes, one shall be a representative of any special interest of the municipal area, which has remained unrepresented on the board after the general election and the third shall be a woman.

2. For Section 10 the following shall be substituted:

10. Power of State Government to vary normal composition of board.—(1) The State Government may declare by notification in respect of any municipality, that its circumstances render inadvisable the application thereto of the provisions of the preceding section; and in such case the board shall ordinarily consist of—

(a) *Nominated members*.—such number of members nominated by the State Government as the State Government prescribes by notification in this behalf, and

(b) *Elected members*.—such number of elected members as the State Government prescribes by notification in this behalf, and

(c) *Chairman*.—where a person who is not a member of the board is elected or nominated as chairman, the person so elected or nominated.

(2) Provided that no notification shall be issued under sub-section (1) in respect of a municipality of which the board is already constituted in accordance with the provisions of Section 9.

3. For Section 11 the following shall be substituted :

11. Provision for local and class representation on board.—The State Government may prescribe by rule in respect of any one or more municipalities—

(a) the division of the municipality into two or more wards, and the number of representatives to be elected for each ward, and

(b) the provision to be made for the special representation, among the elected members of any classes of the community :

Provided that the classes for whom representation may be provided on religious grounds shall be the following two classes and no others—

(a) the class consisting of Muslims, and

(b) the class consisting of non-Muslims.

Provided also that not more than two members shall be assigned by rule to any class for which special representation is provided on other than religious grounds unless the municipality has been specially exempted by rule in this behalf.

4. For Section 12 the following shall be substituted :

12. Conditions governing the provision of special representation on religious grounds.—(1) The power of the State Government to make rules providing special representation, on religious grounds, for a class specified in the first proviso to Section 11, by the assignment to such class of a certain number of elective seats on a board, shall be subject to the conditions set forth in this section.

(2) The number of seats assigned to the class shall be fixed with reference not to the total number of elective seats on the board of the municipality concerned, but with reference only to such number after deduction therefrom of all elective seats assigned to any class or classes other than on religious grounds.

(3) The number of seats assigned to the class shall bear the same proportion to the total net number of seats referred to in sub-section (2) as the population, within the municipality concerned, of the class bears to the total population of such municipality :

Provided that for the purpose of making the calculation herein prescribed, the population of the class shall—

(a) if it is less than 25 per centum of the total municipal population, be increased by three-tenths, and

(b) if it is not less than 25 per centum but is less than 38.5 per centum of the total municipal population, be raised to figure bearing to such total population the last mentioned proportion.

(4) Where the final result of the calculation prescribed by sub-section (3) is a fraction or a whole number and a fraction, the fraction shall be disregarded unless it exceeds one-half and affects a class which comprises less than one-half of the total municipal population, but if it

does both, then the State Government shall by notification under Section 9 or 10, as the case may be, increase the number of elective seats on the board for the time being by one, and shall assign the extra seat to the class, in addition to any whole number of seats furnished by the aforesaid calculation.

(5) As often as the final returns of a new State census are published, the State Government shall, on the basis of such returns, determine, to one and the nearest place of decimals, the percentage for the time being borne by the collective Muslim population of all the municipalities of Uttar Pradesh (excluding the municipalities of Naini Tal and Mussoorie) to the collective total population of such municipalities, and the percentage so determined shall be deemed to have been substituted in clause (b) of sub-section (3) for the percentage 38.5 therein specified with effect from such date as it is published by notification made in this behalf and until the issue of a fresh notification under this sub-section.

5. For Section 13 the following shall be substituted :

13. Special provision in respect of casual vacancies.—Where a vacancy occurs in a board by reason of the death, resignation, removal, or avoidance of the election of an elected member, and the term of office of a member would, in the ordinary course of events, have determined within one year, the State Government may direct that the vacancy be left unfilled until the next ordinary election.

6. For Section 14, the following shall be substituted :

Elections

14. Qualification of electors.—(1) A person shall not be deemed an elector for any purpose of this Act or of any rule under this Act, unless he is enrolled as an elector.

(2) The following persons shall, if not subject to a disqualification specified in sub-section (3), be entitled to be enrolled as electors, namely :

- (a) every person who in any year is on such date as is fixed by rule in this behalf, assessed directly and on his own account to municipal taxes, other than octroi or toll or any similar tax, the aggregate value whereof at their annual rate is not less than such amount as is fixed by rule in this behalf, and
- (b) every person who, having for a period of not less than twelve months next preceding the aforesaid date resided in the municipality, is on the aforesaid date—
 - (i) a graduate of any University, or
 - (ii) a payer of income-tax, or
 - (iii) an owner of a house or building in the municipality of a minimum annual value to be fixed by rule in this behalf, or
 - (iv) an occupier of a house or building in the municipality of a minimum annual value to be fixed by rule in this behalf, or
 - (v) in receipt of a minimum annual income to be prescribed in this behalf, or
 - (vi) an owner in his own right of land in respect of which land revenue amounting to a minimum sum per annum to be fixed by rule in this behalf is payable, or
 - (vii) an owner in his own right of land free of revenue, if the land revenue nominally assessed on such land in order to determine the amount of rates payable in respect of the

same, either alone or together with land revenue payable in respect of other land by such owner, amounts to a minimum sum to be fixed by rule in this behalf, or

- (viii) a fixed rate tenant, ex-proprietary or occupancy tenant of land in respect of which rent amounting to a minimum sum per annum to be prescribed in this behalf is payable or in the hill patts of the Kumaun Division a Khaikar :

Provided further that no qualification in sub-clauses (iii) to (viii) of clause (b) shall apply to any municipality, unless the qualification is made applicable by rule thereto :

Provided further that no qualification in sub-clause (iii), (iv), (vi), (vii) or (viii) shall be higher than the corresponding qualification prescribed for the electors on Uttar Pradesh Legislative Assembly Electoral Roll :

Provided lastly that, notwithstanding anything contained in this section, no person shall be entitled to be enrolled in any municipality as an elector for the purposes of the first election held after the commencement of the United Provinces Municipalities (Amendment) Act, 1922, unless he either was entitled to be enrolled as an elector in the municipality immediately before the commencement of the United Provinces Municipalities (Amendment) Act, 1922, or is enrolled in the Uttar Pradesh Legislative Council Electoral Rolls.

(3) A person, notwithstanding that he is otherwise qualified, shall not be entitled to be enrolled as an elector if he, on the aforesaid date,—

- (a) has not attained the age of twenty-one years, or
- (b) is not an Indian citizen, or
- (c) has been adjudged by a competent court to be of unsound mind, or
- (d) is an undischarged insolvent, or
- (e) has been sentenced to imprisonment for a term exceeding one year or to transportation for an offence, which is declared by the State Government to imply such moral turpitude as to unfit him to be an elector or ordered to find security for good behaviour in consequence of proceedings taken under Section 109 or Section 110 of the Code of Criminal Procedure, such sentence or order not having subsequently been reversed or remitted or the offender pardoned, or
- (f) is in arrears in the payment of any sum to which Section 166 applies :

Provided that a disqualification under clause (e) shall not last for more than five years from the date of the release of the disqualified person from imprisonment or of the expiry of such sentence or order and it may be removed at any time by an order of the State Government.

7. For Section 15 the following shall be substituted :

15. Electoral rolls.—The elected members of a board shall be persons elected by the electors of that municipality :

Provided that when a municipality is divided into wards for electoral purposes—

- (a) a separate roll or separate rolls shall be prepared for each ward, and
- (b) no person shall be entitled to enrolment on more than one ward roll, and
- (c) a member representing a ward shall be elected by electors on the roll or rolls of the ward :

Provided also that where any class of the community in any municipality is declared by rule to be entitled to special representation among the elected members of the board—

- (a) a separate electoral roll or separate rolls shall be prepared for such class, and
- (b) no person belonging to such class shall be entitled to be enrolled on a roll other than a roll prepared for his class, and
- (c) a member representing such class shall be elected by electors on the roll or rolls of the class.

8. For Section 16 the following shall be substituted :

16. Candidates' list.—(1) Subject to the exceptions stated in sub-section (2) every person enrolled as an elector in the municipal electoral roll shall be qualified for election.

(2) A person, notwithstanding that he is otherwise qualified, shall not be entitled to stand as a candidate for election if he—

- (a) has been dismissed from the service of the Government and is debarred from re-employment therein, or
- (b) is debarred from practising as a legal practitioner by order of any competent authority, or
- (c) holds any place of profit in the gift or dispose of the municipal board, or
- (d) is disqualified under Section 27 or 41, or
- (e) is a stipendiary magistrate or police officer, or
- (f) is unable to read and write English or at least one of the vernaculars of the State :

Provided that in clauses (a) and (b) the disqualification may be removed by an order of the State Government in this behalf.

9. For Section 17 the following shall be substituted :

17. Definition of certain terms in Sections 14, 15 and 16.—For the purposes of Sections 14, 15 and 16—

- (a) "person" means an individual human being, and
- (b) a person shall be deemed to pay a tax directly, if he pays the tax himself or through a legally appointed agent.

10. The following shall be inserted as Section 18 :

18. Provision by rule for enrolment of managers, trustees, etc.—The provisions of Sections 14, 15, 16 and 17 shall be subject to any rule conferring on the manager or representatives of an undivided family or of any company or firm or other association or body of individuals, or on any trustee of any land, a right to vote or to be elected a member of a board.

11. Conduct of elections and kindred matters.—In Section 29 the following shall be inserted as clause (a) :

- "(a) with reference to Section 14 the minimum amounts, salaries or sums qualifying a person to be an elector".

12. For Section 30 the following shall be substituted :

Control of Board

30. Power of State Government to dissolve or supersede a board.—If at any time, upon representation made or otherwise, it appears to the State Government that a board persists in making default in the performance of any duty or duties imposed on it by or under this or any other enactment, or in exceeding or abusing its powers, the State Government may, after taking into consideration the explanation

of the board, by an order published with the reasons making it in the official Gazette, either dissolve the board or supersede it for a period to be specified in the order.

“Explanation.—The period of supersession specified in the order may, if the State Government so considers expedient, be extended from time to time by notification.”

13. For Section 31 the following shall be substituted :

31. Consequences of supersession of a board.—When a board is superseded by an order under Section 30—

- (a) all members of the board shall, on a date to be specified in the order, vacate their offices as such members, but without prejudice to their eligibility for election or nomination under clause (e) ;
- (b) during the supersession of the board, such person or persons as the State Government appoints in that behalf may exercise and shall perform, so far as may be, the powers and duties of the board, and shall be deemed the board for all purposes ;
- (c) during such supersession, all property vested in the board shall, pending or in default of the appointment of a person or persons under clause (b) vest in the State ;
- (d) during such supersession the operation of any notification under Section 9 or 10 and of any rule under Section 11 shall, remain in abeyance, but, thereafter, shall revive ; and
- (e) before the expiry of the period of supersession, elections shall be held or nominations made or both, as the case may be, for the purpose of reconstituting the board.

14. For Section 31-A the following shall be substituted :

31-A. Consequences of dissolution of a board.—When a board is dissolved by an order under Section 30—

- (a) all members of the board except the chairman shall, on a date to be specified in such order, vacate their offices as such members, but without prejudice to their eligibility for election or nomination under clause (b) ;
- (b) elections shall be held or nominations made or both, as the case may be, on a date prior to the date mentioned in clause (a) to be specified in the said order for the purpose of reconstituting the board ;
- (c) the provisions of Sections 43 and 44 shall apply as if the election was being held after a general election of the members of the board.

15. For Section 38 the following shall be substituted :

38. Term of office of members.—(1) The term of office of a member of a board shall begin from the date upon which he is declared by the returning officer to be elected or from the date of his nomination or from the date upon which the vacancy occurs for which he is elected or nominated to fill if the vacancy occurs subsequent to the election or nomination and shall cease, subject to the provisions of Sections 39 and 40, upon the first day of the general election.

(2) The term of office of an *ex officio* member, other than a member who holds office by reason only of being chairman, shall continue during the pleasure of the authority nominating him, and shall commence from the date of nomination or, when the nomination has been

made before the vacancy has occurred, from the date on which the vacancy occurs :

Provided that a person ceasing to be a member by reason of the expiry of his term of office shall, if otherwise qualified, be eligible for re-election or re-nomination.

16. To sub-section (4) of Section 40 the following shall be added as a second proviso :

“Provided also that the State Government may place under suspension a member against whom an enquiry relating to the abuse of his position as a member is pending in a court of law or under the orders of the State Government or the Commissioner, till final orders have been passed on the legal proceedings or the inquiry, as the case may be. Such member shall take no part in any proceedings of the board during the period of suspension.

17. In Section 41 the following amendment shall be made :

From sub-section (1) of Section 41 the comma and the word “co-option” occurring after the word “election” shall be omitted.

18. In Section 42 the word “co-opted” and the comma before and after it shall be omitted.

19. For Section 43 the following shall be substituted :

43. Election or nomination of chairman.—(1) All members and persons qualified to be members of the board shall be eligible for election to the office of chairman of the board ; provided that no whole-time salaried Government servant and no member or servant of a district board shall be so eligible.

Explanation.—A Government Pleader or an Assistant Government Pleader, an Honorary Magistrate, an Honorary Assistant Collector or an Honorary Munsif shall, but Government treasurer shall not be deemed to be a whole-time salaried servant of the Government within the meaning of this sub-section.

(2) When a board is completed after a general election it shall elect its own chairman in the manner provided in Section 44: provided that if any board fails to do so the State Government shall nominate a chairman for that board. A board shall be deemed to be complete if all the elected seats have been filled up after a general election.

(3) The State Government may by notification in the official Gazette declare that the provisions of sub-section (2) shall not apply in the case of a board specified in the notification, and shall in such case nominate such person as it thinks fit to be chairman of such board : provided that no such notification shall be operative for more than one year in respect of any board, the chairman of which on April 1, 1929, was not a Government servant.

(4) If there is a question whether the chairman of a board was duly qualified for election or has been duly elected or nominated under this section the decision of the State Government shall be final.

20. For Section 44 the following shall be substituted :

44. Procedure for election of chairman.—(1) For the purpose of electing a chairman under sub-section (2) of Section 43, a meeting of the board of which no previous notice shall be required to be given shall be held at the office of the board at 2 p. m. on a date which shall be subsequent to the election of members of the board and shall be fixed by the State Government by notification in the official Gazette.

(2) A stipendiary civil judicial officer previously appointed by the State Government in this behalf shall act as chairman of a meeting

held under the provisions of this section : provided that the chairman of a meeting held under the provisions of this section shall have no right to vote thereat.

(3) The following procedure shall be observed at a meeting held under the provisions of this section, namely—

(a) If only one duly qualified candidate is proposed and seconded he shall be deemed to be elected.

(b) If two but not more than two duly qualified candidates are proposed and seconded, the candidate who obtains the greater number of votes shall be deemed to be elected.

(c) If more than two duly qualified candidates are proposed and seconded, the names of the two candidates who obtain the greatest number of votes shall again be put to vote and the candidate who then obtains the greater number of votes shall be deemed to be elected.

(d) Every member who desires to vote shall write the name of the candidate for whom he wishes to vote upon a blank voting paper and shall also sign his own name thereon, and the voting papers shall form part of the minutes of the proceedings.

(e) In case of equality of votes the chairman shall decide the question by drawing lots.

(4) If at 4 p. m. on the date of a meeting held under the provisions of this section a chairman has not been elected the meeting shall stand adjourned.

(5) If a meeting is adjourned under the provisions of sub-section (4) the adjourned meeting shall be held at 2 p. m. at the office of the board on the seventh day after the adjournment and the procedure shall be the same as at the previous meeting.

(6) If at 4 p.m. on the date of an adjourned meeting held under the provisions of sub-section (5), a chairman has not been elected, the chairman of the meeting shall send the minutes of the meeting and of the adjourned meeting to the District Magistrate who shall send them to the State Government.

21. For Section 44-A the following shall be substituted :

44-A. Election or nomination of chairman on casual vacancy.—(1) If a casual vacancy in the office of chairman occurs owing to the death, resignation or removal of the chairman, a meeting of the board for the purpose of electing a chairman shall be held on such day as the State Government may, by notification in the official Gazette, appoint after the occurrence of the vacancy.

(2) To a meeting held under sub-section (1) the provisions of Section 44 shall apply as far as may be.

(3) If the board fails to elect a chairman under the provisions of this section the State Government shall nominate a chairman.

(4) When there is a question whether a chairman of a board has been duly elected or nominated under the provisions of this section the decision of the State Government on the question shall be final.

22. In Section 46 :

In sub-section (2), the words “and notwithstanding anything in Section 38” between the figure “48” and the word “the” shall be inserted.

23. Section 47-A shall stand omitted.

24. (a) In Section 48 the following shall be added as sub-section (1) :

“A chairman in respect of whom an order has been made under Section 40 removing him from the board as member shall thereupon cease to be chairman.”

(b) In sub-section (2) for the word “President” the word “Chairman” shall be substituted.

25. Section 69-A shall stand omitted.

26. For Section 87-A the following shall be substituted :

87-A. Motion of non-confidence against chairman.—(1) Subject to the provisions of this section, a motion expressing non-confidence in the chairman shall be made only in accordance with the procedure laid down below :

(2) Written notice of intention to make a motion of non-confidence in its chairman, signed by such number of members of the board as constitute not less than one-half of the total number of members of the board, together with a copy of the motion which it is proposed to make, shall be delivered in person together by any two of the members signing the notice to the District Magistrate.

(3) The District Magistrate shall then convene a meeting for the consideration of the motion to be held at the office of the board, on the date and at the time appointed by him which shall not be earlier than thirty and not later than thirty-five days from the date on which the notice under sub-section (2) was delivered to him. He shall send by registered post not less than seven clear days before the date of the meeting, a notice of such meeting and of the date and time appointed therefor, to every member of the board at his place of residence and shall at the same time cause such notice to be published in such manner as he may deem fit. Thereupon every member shall be deemed to have received the notice.

(4) The District Magistrate shall arrange with the District Judge for a stipendiary civil judicial officer to preside at the meeting convened under this section, and no other person shall preside thereat. If within half an hour from the time appointed for the meeting, the judicial officer is not present to preside at the meeting, the meeting shall stand adjourned to the date and the time, to be appointed and notified to the members by that officer under sub-section (5).

(5) If the judicial officer is unable to preside at the meeting, he may, after recording his reasons, adjourn the meeting to such other date and time as he may appoint, but not later than fifteen days from the date appointed for the meeting under sub-section (3). He shall without delay communicate in writing to the District Magistrate the adjournment of the meeting. It shall not be necessary to send notice of the date and the time of the adjourned meeting to the members individually, but the District Magistrate shall give notice of the date and the time of the adjourned meeting by publication in the manner provided in sub-section (3).

(6) Save as provided in sub-sections (4) and (5) a meeting convened for the purpose of considering a motion under this section shall not for any reason be adjourned.

(7) As soon as the meeting convened under this section has commenced, the judicial officer shall read to the board the motion for the consideration of which it has been convened and declare it to be open for discussion.

(8) No discussion on any motion under this section shall be adjourned.

(9) Such discussion shall automatically terminate on the expiry of three hours from the time appointed for the commencement of the meeting, unless it is concluded earlier. Upon the conclusion of the debate or upon the expiry of the said period of three hours, as the case may be, the motion shall be put to the vote of the board.

(10) The judicial officer shall not speak on the merits of the motion, nor shall he be entitled to vote thereon.

(11) A copy of the minutes of the meeting together with a copy of the motion and the result of the voting thereon shall on the termination of the meeting, be forwarded forthwith by the judicial officer to the District Magistrate for submission to the State Government.

(12) The motion shall be deemed to have been carried only when it has been passed by a majority of more than half of the total number of members of the board, and when it has been so carried the State Government shall by notification in the official Gazette, remove the chairman and the chairman shall be deemed to have vacated office with effect from the date of publication of the notification.

(13) If the motion is not carried by a majority as aforesaid, or if the meeting cannot be held for want of a quorum, no notice of any subsequent motion of non-confidence in the same chairman shall be received until after the expiry of a period of twelve months from the date of the meeting.

(14) No notice of a motion of non-confidence under this section shall be received within twelve months of the assumption of office by a chairman.

(15) Nothing done by any member of the board, the District Magistrate, the judicial officer or the State Government in pursuance of the provisions of this section shall be questioned in any Court.

27. In Section 113 the words "President or" and "as the case may be" shall be omitted.

28. In Section 117 the words "in the manner prescribed" shall be omitted.

29. In Section 296 from sub-section (1) the figures, word and letters "43-A and 44-A" shall be omitted.

30. In Sections 45, 46, 47, 49, 50, 51, 52, 53, 53-A, 54, 55, 56, 59, 60-A, 62, 64, 70, 74, 75, 76, 77, 82, 86, 87, 88, 89, 90, 91, 92, 94, 97, 98, 104, 107, 108, 110, 112, 144, 159, 169, 172, 182, 226, 243, 287, 288, 315, Schedule I and Schedule VII—for the words "President" "Vice-President" and "Vice-Presidents" wherever they occur therein the words "Chairman", "Vice-Chairman" and "Vice-Chairmen" shall respectively be substituted.

31. (1) In Schedule I (a) in column 1 below the figure 13 the figure "43" and in column 2 against it the words "To elect a Chairman" shall be inserted.

(2) From column 3 against Section 124 the words "may be delegated if the transfer relates to movable property" shall be omitted.

32. In Schedule VII the entries relating to Section 47-A shall be deleted.

THE UNITED PROVINCES MUSLIM WAQFS ACT, 1936¹

(U. P. ACT No. XIII OF 1936)

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SCHEDULE

(Received the assent of the Governor on February 7, 1937, and of the Governor-General on March 5, 1937, and was published^a, under Section 81 of the Government of India Act, 1919, on March 20, 1937.)

An Act for the better governance, administration and supervision of certain classes of Muslim Waqfs in the United Provinces of Agra and Oudh.

Whereas it is expedient to provide for the better governance and administration of certain classes of waqfs and the supervision of mutawallis' management of them in accordance with the waqfs' directions, in the United Provinces of Agra and Oudh ;

And whereas the previous sanction of the Governor-General has been obtained under sub-section (3) of Section 80-A of the Government of India Act to the passing of this Act ;

It is hereby enacted as follows :

Preliminary

1. Short title, commencement and extent.—(1) This Act shall be called "The United Provinces Muslim Waqfs Act, 1936."

2. For S. O. R., see *Gaz.*, 1937, Pt. VII, p. 118; for discussions, see L. A. Pro. d. Sep. 30, 1937, and Oct. 2, 1937, in Vol. II, pp. 1514-1515 and pp. 1673-1678, respectively, and L. C. Pro. d. Oct. 5, 1937, and Oct. 23, 1937, in Vol. I, pp. 536, and pp. 769-773 and 774-776, respectively; for publication, see *Gaz.* 1937, Pt. VII, p. 47.

3. This Act was made by the Governor in exercise of the powers assumed by him by the Proclamation, d. Nov. 3, 1939, and issued under S. 93 of the G. of I. Act, 1935, and was published, with S. O. R., in *Gaz.*, 1941, Pt. VII-A, p. 11. It was re-enacted by S. 3 and schedule of U. P. Act XIII of 1948.

4. For S. O. R., see *Gaz. Extra.*, d. Sept. 17, 1951, for discussion see L. A. Pro. d. Sep. 19, 1951, in Vol. XCVIII, pp. 162-163, d. Sep. 24 and 27, 1951, in Vol. XCIX, pp. 30-61 and 193-230, d. Mar. 7, 1952, p. 23 and L. C. Pro., d. Sept. 28 and 29, 1951, and March 7, 1952, in Vol. XXIV, pp. 207, 278-283 and 293, respectively, Ss. 2-5 of this Act came into force on

July 16, 1952, see not. no. 73—Waqf/XXIII-A — 2-Waqf-52, d. July 9, 1952, in *Gaz.* d. July 12, 1952, Pt. I, p. 623. For the full Act see Appendix.

Passed in Hindi by the Uttar Pradesh Legislative Assembly on Sep. 27, 1951, and by the Uttar Pradesh Legislative Council on Sep. 29, 1951.

Received the assent of the President on December 22, 1951, under Article 201 of the Constitution of India and was published in *Gaz. Extra.* d. Jan. 19, 1942.

Section 6 of this Act runs as follows :

"Notwithstanding that Sections 2 and 3 shall come into force from the date of notification under sub-section (2) of Section 1, the elections for the reconstitution of the Sunni Central Board in accordance with the provisions of Section 7 of the Principal Act as amended by this Act may be held after Section 1 has come into force but any election so held shall not take effect till the enforcement of the said sections."

5. See *Gaz.* 1937, Pt. VII, pp. 9-19.

(2) This section and Sections 2 to 4 shall come into force at once. The rest of the Act shall not come into force until such date as the [State Government]¹ may, by notification in the [Official Gazette]² appoint³ in this behalf.

(3) It shall extend⁴ to the whole of [Uttar Pradesh]⁵ * * * *.

2. Applicability of the Act.—(1) Save as herein otherwise specifically stated, this Act shall apply to all waqfs, whether created before or after this Act comes into force, any part of the property which is situate in [Uttar Pradesh]⁵.

(2) This act shall not apply to—

(i) a waqf created by a deed, if any, under the terms of which not less than 75 per cent. of the total income after deduction of land revenue and cesses payable to [the State Government]⁷ of the property covered by the deed of waqf, if any, is for the time being payable for the benefit of the waqif or his descendants or any member of his family ;

(ii) a waqf created solely for either of the following purposes :

(a) the maintenance and support of any person other than the waqif or his descendants or any member of his family,

(b) the celebration of religious ceremonies, connected with the death anniversaries of the waqif or of any member of his family or any of his ancestors,

(c) the maintenance of private imambaras, tombs and graveyards, or

(d) the maintenance and support of the waqif or for payment of his debts, when the waqif is a Hanafi Musalman ; and

(iii) the waqfs mentioned in the schedule :

1. Subs. by the A. O. 1950 for (Provl. Govt.) which had been subs. by the A. O. 1937 for (L. G.).
2. Subs. for (Govt.) by the A. O. 1937.
3. Ss. 5 to 71 came into force on July 1, 1941, see not. no. 25/C/C, d. June 20, 1941, in Gaz. 1941, Pt. I, p. 311.

4. This Act has been extended to the areas mentioned in column 1 of this table under the Act or Order mentioned in column 2 and enforced in such areas under notification, if any, mentioned in column 3 with effect from the date mentioned in column 4 against each such area :

Areas	Act or Order under which extended	Notification, if any, under which enforced	Date, from which enforced
1	2	3	4
1. Rampur District	Rampur (Application of Laws) Act, 1950	No. 2462/XVII—345, d. Aug. 23, 1951	Sep. 1, 1951
2. Banaras District	Banaras (Application of Laws) Order, 1949	2462 (i)*XVII d. Aug. 23, 1951	Ditto.
3. Tehri-Garhwal District.	Tehri-Garhwal (Application of Laws) Order, 1949.	2462(ii) XII d. Aug. 23, 1951	Ditto.
5. Subs. by the A. O. 1950 for [the United Provinces].		Subs. by A. O. 1950 for [Provl. Govt.] which had been subs. by the A. O. 1937 for [Govt.].	
6. The words [of Agra and Oudh] omit by <i>ibid</i> .			

Provided that if the mutawalli of a waqf to which this Act does not apply wrongfully sells or mortgages, or suffers to be sold in execution of a decree against himself or otherwise destroys the whole or any part of the waqf property, the Central Board may apply all or any of the provisions of this Act to such waqf for such time as it may think necessary.

Explanation—A waqf which is originally exempt from the operation of this Act may, for any reason subsequently, become subject to such operation, for example, by reason of a higher percentage of its income becoming available under the terms of the deed for public charities.

3. Interpretation clauses.—In this Act, unless there is anything repugnant in the subject or context—

(1) "Waqf" means the permanent dedication or grant of any property for any purposes recognized by the Musalman law or usage as religious, pious or charitable and, where no deed of waqf is traceable, includes waqf by user, and a waqif means any person who makes such dedication or grant.

(2) "Beneficiary" means the person or object for whose benefit a waqf is created and includes religious, pious or charitable objects, and any other object of public utility established for the benefit of the Muslim community or any particular sect of the Muslim community.

(3) "Mutawalli" means a manager of a waqf or endowment and includes an amin, a sajjadanashin, a khadim, naib-mutawalli and a committee of management, and, save as otherwise provided in this Act, any person who is for the time being in charge of, or administering, any endowment as such.

(4) "Family" includes—

(a) Parents and grand-parents.

(b) Wife or husband.

(c) Persons related through any ancestor male or female.

(d) Persons who reside with, and are maintained by the waqif, whether related to him or not.

(5) Property includes Government securities and bonds, shares in firms and companies, stocks, debentures and other securities and instruments.

(6) "Prescribed" means prescribed by rules made under this Act.

(7) "Court" means, unless otherwise stated either expressly or by implication, the court of the District Judge or any other court empowered by the [State Government]¹ to exercise jurisdiction under this Act.

(8) "Net income" means the total income minus the land revenue and other cesses payable to the [State Government]² and to local bodies :

Provided that in the case of land paying land revenue the recorded income shall be deemed to be the total income.

CHAPTER I

SURVEY OF WAQFS AND CENTRAL BOARDS OF WAQFS

4. Survey of waqfs.—(1) Within three months of the commencement of this Act the [State Government]¹ shall by notification

1. *Subs.* by the A. O. 1950 for (Provl Govt.) which had been *subs.* by the A. O. 1937 for (L. G.).

2. *Subs.* by the A. O. 1950 for (Provl Govt.) which had been *subs.* by the A. O. 1937 for (Govt.).

in the [Official Gazette]⁴ appoint for each district a gazetted officer, either by name or by official designation, for the purpose of making a survey of all waqfs in such district, whether s ubject to this Act or not. Such officer shall be called the "Commissioner of Waqfs."

(2) The [State Government]¹ may, from time to time when necessary, cancel any appointment under sub-section (1) or make a new appointment.

(3) The Commissioner of Waqfs shall, after making such inquiries as he may consider necessary, ascertain and determine—

- (a) the number of all Shia and Sunni waqfs in the district ;
- (b) the nature of each waqf ;
- (c) the gross income of property comprised in the waqf ;
- (d) the amount of Government revenue, cesses and taxes payable in respect of waqf property ;
- (e) expenses incurred in the realization of the income and the pay of the mutawalli of each waqf if the waqf is not exempted under Section 2 ; and
- (f) whether the waqf is one of those exempted from the provisions of this Act under Section 2 :

Provided that where there is a dispute whether a particular waqf is Shia waqf or Sunni waqf and there are clear indications as to the sect to which it pertains in the recitals of the deed of waqf, such dispute shall be decided on the basis of such recitals.

(4) In making such inquiries as aforesaid, the Commissioner of waqfs shall exercise all the powers of a Civil Court for summoning and examining witnesses and documents, making local inspections, appointing commissioners for examination of witnesses, examining of accounts and making local investigations.

(5) The Commissioner of Waqfs shall submit his report of inquiry to the [State Government]¹.

(6) The total cost of carrying out the provisions of this section shall be borne by the mutawallis of all waqfs to which the Musalman Waqfs Act, 1923², applies in proportion to the income of the property of such waqfs situated in [Uttar Pradesh]³.

(7) Notwithstanding anything in the deed or instrument creating any waqf, any mutawalli may pay from the income of th : waqf property any sum due from him under sub-section (6).

(8) Any sum due from a mutawalli under sub-section (6) may, on a certificate issued by the [State Government]¹ be recovered by the Collector in the manner provided by law for recovery of an arrear of land revenue.

⁵[4-A. Appointment of State Commissioners of Waqfs.—(1)

In addition to the Commissioner of Waqfs appointed under Section 4, the [State Government]⁶ may, by notification in the Gazette, appoint as many [State]⁷ Commissioners of Waqfs to have jurisdiction in all districts of the [State]⁷ as it may think necessary. The duties and powers of the [State]⁷ Commissioners of Waqfs shall be the same as those of the Commissioners of Waqfs under Section 4.

1. *Subs.* by the A. O. 1950 for (Provl. Govt.) which had been *subs.* by the A. O. 1937 for (L. G.).

2. U. C. A., Vol. VII, p. 704.

3. *Subs.* by the A. O. 1950 for [the United Provinces].

4. *Subs.* for 'Gaz.' by the A. O. 1937.

5. *Add.* by S. 2 of U. P. Act XI of 1937.

6. *Subs.* by the A. O. 1950 for [Provl. Govt.].

7. *Subs.* by *ibid* for [Provl.] or [Province].

(2) One of such [State]¹ Commissioners of Waqfs shall be appointed by the Chief [State]¹ Commissioner of Waqfs for the purpose of sub-section (3).

(3) The Chief [State]¹ Commissioner of Waqfs shall apportion the work of survey of Waqfs between the Commissioners of Waqfs and the [State]¹ Commissioners of Waqfs in such manner as he may think proper, and shall direct by whom report required by Section 4 (5) shall be submitted and any inquiry made or report submitted by a [State]¹ Commissioner of Waqfs, shall, for the purposes of this Act, be deemed to be the inquiry or report, as the case may be, of the Commissioner of Waqfs.]

5. Commissioner's report.—(1) The [State Government]¹ shall forward a copy of the Commissioner's report to each of the Central Boards constituted under this Act. Each Central Board shall as soon as possible notify in the [Official Gazette]² the waqfs relating to the particular sect to which, according to such report, the provisions of this Act apply.

(2) The mutawalli of a waqf or any person interested in a waqf or a Central Board may bring a suit in a Civil Court of competent jurisdiction for a declaration that any transaction held by the Commissioner of Waqfs to be a waqf is not a waqf, or any transaction held or assumed by him not to be a waqf is a waqf, or that a waqf held by him to pertain to a particular sect does not belong to that sect, or that any waqf reported by such Commissioner as being subject to the provisions of this Act is exempted under Section 2, or that any waqf held by him to be so exempted is subject to this Act :

Provided that no such suit shall be instituted by a Central Board after more than two years of the receipt of the report of the Commissioner of Waqfs, and by a mutawalli or person interested in a waqf after more than one year of the notification referred to in sub-section (1):

Provided also that no proceedings under this Act in respect of any waqf shall be stayed or suspended merely by reason of the pendency of any such suit or of any appeal arising out of any such suit.

(3) Subject to the final result of any suit instituted under sub-section (2) the report of the Commissioner of Waqfs shall be final and conclusive.

(4) The Commissioner of Waqfs shall not be made a defendant to any suit under sub-section (2) and no suit shall be instituted against him for anything done by him in good faith under colour of this Act.

6. Establishment of Central Boards.—(1) There shall be established in [Uttar Pradesh]³ two separate Boards to be called the "Shia Central Board" and the "Sunni Central Board" of waqfs. Each such Board shall be a body corporate and shall have perpetual succession and a common seal and shall by its said name sue or be sued.

(2) All members of the Sunni Central Board shall be Sunnis and all members of the Shia Central Board shall be Shias.

(3) The Shia Central Board shall deal with Shia waqfs and the Sunni Central Board with Sunni waqfs and everything required or permitted by this Act to be done by the Central Board shall in case

1. Subs. by the A. O. 1950 for [Provl.]
or [Province].

2. Subs. for [Gazette] by the A. O.

1937.

3. Subs. by the A. O. 1950 for [the
United Provinces].

of Shia waqfs be done by the Shia Central Board and in case of Sunni waqfs by the Sunni Central Board.

7. Constitution of Sunni Central Board.—The Sunni Central Board shall consist of—

- (i) five members to be elected in the manner prescribed by Sunni members of the [Legislature of the State]².
- [(ii) two members to be elected from amongst themselves by Sunni Muslim members of the Advocates Association, Allahabad, Bar Library and Bar Association, Allahabad and Oudh Bar Association, Lucknow, in the manner prescribed :
- ³(ii-A) one member to be elected from amongst themselves in the manner prescribed by members of the working committee of the State Jamiat-Ulema, Uttar Pradesh.
- (ii-B) one member, who shall be a Sunni Muslim possessing special knowledge in Accountancy to be co-opted by ⁴[the members elected under clause (i) to (ii-A) above].
- (iii) three members to be co-opted by the above nine members from persons whom they regard as ulamas, and two members from among mutawallis, and
- (iv) the President, if he is not one of the above fourteen members :

* * *

8. Constitution of Shia Central Board.—(1) The Shia Central Board shall consist of—

- (i) five members to be elected in the manner prescribed by the Shia members of [the legislature of the State]⁵ ;
 - (ii) one member to be elected in the manner prescribed by the Executive Committee of the All-India Shia Conference ;
 - (iii) one member to be elected in the manner prescribed by the Board of Trustees of the Shia College, Lucknow ;
 - (iv) three members to be co-opted by the above seven members from persons whom they regard as ulamas ; and
 - (v) the President, if he is not one of the above ten members.
- (2) The first Shia Central Board shall be established by the [State Government]⁷ within three months of the date on which this section comes into force, and the election of members for such Board shall be held in such manner as the [State Government]⁷ may direct.

⁸[**8-A.** Nothing in Sections 7 or 8, or in Section 12 omitted by Section 5 of the U. P. Muslim Waqfs (Amendment) Act, 1952, shall be deemed ever to have required that the members, to be elected by the members of the State Legislature shall be from amongst the members for the time being of any House of the said Legislature.]

9. (1) If at any election of members of a Central Board the full number of five members is not elected by the local legislature, the deficiency shall be made up by election of the requisite number of mem-

1. Section 3 of the U. P. Act XXXIV of 1951 runs as follows :

“The first Sunni Central Board established under Section 7 of the Principal Act shall be and is hereby dissolved from the date this section comes into force”

2. Subs. by *ibid* for [local legislature].

3. Subs. by S. 2 (a) and (b) of U. P. Act XXXIV of 1951.

4. Subs. by U. P. Act IX of 1953.

5. Proviso omit by S. 2 (c) of the U. P. Act XXXIV of 1951.

6. Subs. for [the Local Legislature] by A. O. 1950.

7. Subs. by the A. O. 1950 for (Provl. Govt.) which had been subs. by the A. O. 1937 for (L. G.).

8. Added by U. P. Act IX of 1953.

bers by the Provincial Muslim Educational Conference in the case of Sunni Central Board, and by the Executive Committee of the All-India Shia Conference in the case of Shia Central Board. In case of the failure of the Provincial Muslim Educational Conference or the All-India Shia Conference to make up the deficiency, the same shall be made up by nomination by the [State Government]¹.

(2) If the bodies referred to in clause (i) of the proviso to Section 7 and clauses (ii) and (iii) in Section 8 fail to return the requisite number of members within such time as may be fixed, the deficiency shall be made up by nomination by the [State Government]¹.

^{1a}[10. Every Central Board shall continue for five years from the date appointed for its first meeting and on the expiration of the said period of five years, all the members then constituting the Board shall vacate their offices ;

Provided that the State Government may by notification in the gazette extend the said period by a further period not exceeding one year.]

* * *2

11. * * *3

12. After the formation of legislative bodies under the Government of India Act, 1935, the five members of [the legislature of the State]⁴ referred to in Sections 7 and 8 shall be elected as follows :

(i) four members by the Sunni or Shia members, as the case may be, of the [State]⁵ Legislative Assembly ;

(ii) one member by the Sunni or Shia members, as the case may be, of the [State]⁵ Legislative Council.

13. The offices of the Central Boards shall be at Lucknow.

14. The quorum for a meeting of a Central Board shall be one-half of the number of members of the Board.

15. The decision of the Central Board shall be by a majority of its members present and voting. In case of equal division, the President shall have a second or casting vote.

16. (1) Each Central Board shall have a President and a Secretary who shall be Muslims belonging to the Shia sect in the case of the Shia Central Board and to the Sunni sect in the case of the Sunni Central Board :

Provided that no mutawalli of a waqf which is not exempted from the operation of this Act or a Government Treasurer or a wholetime servant of the Government or the servant of any waqf administration shall be elected as President.

(2) Immediately after formation of a Central Board and subsequently whenever it becomes necessary by reason of an existing or anticipated vacancy or otherwise to appoint a President, the Central Board shall elect one of its members or any other person as President. The President shall be honorary and shall hold office for a term of five years, but if he is a member of the Central Board his term shall expire on the expiry of his term as a member, and in the case of the President of the first Sunni Central Board established by the [State Government]¹ his term shall expire on the formation of a new Sunni Central Board.

(3) The Central Board shall appoint a [gazetted officer of the State

1. Subs. by the A. O. 1950 for (Prov. Govt.) which had been subs. by the A. O. 1937 for (L. G.).

1-a. Subs. by U. P. Act IX of 1953.

2. The second proviso omit. by S. 4 of

U. P. Act XXXIV of 1951.

3. Omit by S. 5. *ibid*.

4. Subs. for (the local legislature) by the A. O. 1950.

5. Subs. by the A. O. 1950 for [Prov.].

Government]¹ as its wholetime Secretary on such pay, allowances and terms and other conditions of service as may be prescribed, provided that if no gazetted officer is available, the Central Board may appoint another person.

17. Staff of Central Board.—(1) The Central Board may appoint such staff including superintendents of waqfs, inspectors, auditors, and other officers on such salaries, allowances and other conditions of service as may be necessary for the purpose of carrying out the provisions of this Act and for such period as it thinks fit.

(2) All persons appointed under sub-section (1) and the Presidents and Secretaries of the Central Boards shall be deemed to be public servants within the meaning of the Indian Penal Code, 1860².

(3) The Central Board may fine, suspend, dismiss or remove any person appointed by it under sub-section (1) or a Secretary who is not a [gazetted officer of the State Government]³.

18. Function of the Central Board.—The general superintendence of all waqfs to which this Act applies shall vest in the Central Board. The Central Board shall do all things reasonable and necessary to ensure that waqfs or endowments under its superintendence are properly maintained, controlled and administered and duly appropriated to the purposes for which they were founded or for which they exist.

(2) Without prejudice to the generality of the provisions of sub-section (1) the powers and duties of the Central Board shall be—

(a) to compile and maintain an authentic record of rights containing information relating to the origin, income, object, and beneficiaries of every waqf in each district;

(b) to prepare and settle its own budget;

(c) to settle and pass budgets submitted by the mutawallis direct to the Board and any budget submitted to, but not approved by a District Waqf Committee, provided that it is in accordance with the wishes of the waqf and the terms of the deed of waqf;

(d) to settle and pass the annual budgets of the District Waqf Committees.

(e) to institute and defend suits, and proceedings in a court of law relating to—

(i) administration of waqfs.

(ii) taking of accounts,

(iii) appointment and removal of mutawallis in accordance with the deed of waqf if it is transferable.

(iv) putting the mutawallis in possession or removing them from possession.

(v) settlement or modification of any scheme of management;

(f) to sanction the institution of suits under Section 92 of the Code of Civil Procedure, 1908³, relating to waqfs, to which this Act applies;

(g) to take measures for the recovery of lost properties;

(h) to settle schemes of management and application of waqf funds in accordance with the doctrine of *cypres* in case of those waqfs, the objects of which are not evident from any

1. Subs. for [Government gazetted officer] by the A. O. 1937. The word (State) was *subs.* for the word (Prov.) by the A. O. 1950.

2. U. C. A., Vol. I, p. 214.

3. Subs. for (Govt. Officer) by the A. O. 1937. The word (State) was *subs.* for the word (Prov.) by the A. O. 1950.

4. U. C. A., Vol. V, p. 1.

written instrument or in cases in which the objects for which they were created have ceased to exist;

- (i) to enter upon and inspect waqf properties;
- (j) to investigate into the nature and extent of waqfs and waqf properties and call from time to time for accounts and other returns and information from the mutawallis and give directions for the proper administration of waqfs;
- (k) to arrange for the auditing of accounts submitted by the mutawallis;
- (l) to direct the deposit of surplus money in the hands of the mutawalli in any approved bank and to utilize it on the objects of waqf;
- (m) to supervise and control the District Waqf Committees;
- (n) to administer the waqf fund;
- (o) to keep regular accounts of receipts and disbursement and submit the same in the manner prescribed;
- (p) to institute when necessary an inquiry relating to the administration of a waqf:

Provided that in the appointment of mutawallis or in making any other arrangement for the management of waqf property the Central Board shall be guided as far as possible by the directions of the waqf, if any.

19. Delegation of powers.—The Central Board may delegate any of its duties under this Act to the President or Secretary and may likewise withdraw any such delegation.

20. Removal of members of Central Boards and their reappointment.—The Central Board may, by notification in the [Official Gazette]¹ remove any member of the Board if he—

- (a) refuses to act or becomes incapable of acting as a member of the Board, or
- (b) is declared insolvent, or
- (c) after his election, co-option, or nomination as member, is convicted of any such offence or is subjected by a criminal court to any such order as, in the opinion of the Central Board, implies that he is unfit to continue to be a member of the Board, or
- (d) without excuse, sufficient in the opinion of the Central Board, is absent without the consent of the Board for more than six consecutive meetings of the Board.

21. A member of the Board may resign his office by giving notice in writing to the President and on such resignation being accepted by the Central Board, shall be deemed to have vacated his office.

22. When the place of a member becomes vacant by his removal, resignation or death, a new member shall be elected or co-opted as the case may be in the manner provided in Section 6 and shall hold office so long as the member whose place he fills would have been entitled to hold office if such vacancy had not occurred:

Provided that no act or order of the Central Board or of its officers shall be deemed to be invalid by reason only that the number of members of the Central Board at the time of the performance of such act or the passing of such order was less than the number provided in Sections 7 and 8.

1. Subs. for [Gazette] by the A. O. 1937.

23. Opinion of Central Board.—The mutawalli of any waqf governed by this Act may apply by petition to the Central Board for its opinion, advice or direction on any question affecting the management or administration of the property of such waqf and the Central Board shall give such opinion, advice or direction :

Provided that the Central Board shall not be bound to give such opinion, advice or direction on any question which is not in its opinion a fit question for summary disposal.

24. The Central Board may grant inspection and copies of its proceedings or other records, in its custody on payment of such fees and subject to such conditions as may be prescribed by rules. All copies issued under this section shall be certified by the Secretary of the Central Board in the manner provided in Section 76 of the Indian Evidence Act, 1872.¹

CHAPTER II

SUNNI DISTRICT WAQF COMMITTEES AND SHIA SUB-COMMITTEES

25. Establishment of District Waqf Committees.—(1) After the survey of waqfs provided for in the preceding chapter has been completed, the Sunni Central Board may, from time to time, determine the districts in which District Waqf Committee shall be established and shall direct the Collectors of such districts to form such committees :

Provided that the Central Board shall direct that such committees shall be established in districts in which the total net income of properties of Sunni waqfs subject to this Act shall be one lakh of rupees or more.

(2) Whenever the Sunni Central Board directs that in any district a District Waqf Committee shall be established, the Collector shall establish such committee to be called the Sunni District Waqf Committee.

26. Constitution of District Waqf Committees.—(1) The Sunni District Waqf Committees shall consist of:—

(a) all members for the time being of [Parliament and the State Legislature]² for such district belonging to the Sunni sect ;

(b) five members belonging to the Sunni sect, to be elected in such manner as may be prescribed, by an electoral college composed of all Sunni members of the District Board and the several municipal and cantonment boards, town areas and notified areas in the district ;

(c) one member of the Sunni sect, to be co-opted by the remaining members of the committee from persons whom they regard as ulamas ;

(d) one member to be co-opted by the members of the District Committee from amongst the mutawallis of the district ; and

(e) the President, if he is not a member of the committee.

(2) The members of the Sunni District Waqf Committees shall hold office ordinarily for five years :

Provided that an elected or co-opted member of the Sunni District Waqf Committee shall, notwithstanding the expiration of his term of office, continue to hold office until the vacancy caused by the expiration of the said term has been filled.

1. U. C. A., Vol. II, p. 1.

2. Subs. for [the local and Central Legislature] by the A. O. 1950.

(3) A person ceasing to be member by reason of the expiration of his office shall be eligible for re-election or for being co-opted again.

27. President and Secretary.—(1) Every District Waqf Committee shall have a President and a Secretary, who shall be Muslims of the Sunnisect.

(2) Immediately on the establishment of a District Waqf Committee and subsequently whenever it becomes necessary by reason of an existing or anticipated vacancy or otherwise, to appoint a President, the said committee shall elect one of its members or any other person as President. The President shall be honorary and shall hold office for a term of five years but if he is a member of the committee his term as President shall expire on the expiration of his term as a member.

(3) The Secretary shall be a wholetime salaried officer appointed by the committee on such pay and allowances and on such terms as may be prescribed.

28. Staff of the District Waqf Committee.—(1) Each District Waqf Committee may, with the previous sanction of the Central Board, appoint such staff as may be necessary for carrying out its duties under this Act on such pay, allowances and conditions of service as may be approved by the Central Board.

(2) All persons appointed under sub-section (1) and the President and the Secretary of the District Waqf Committee shall be public servants within the meaning of Section 21 of the Indian Penal Code, 1860.¹

29. A Sunni District Waqf Committee may fine, suspend, dismiss or remove the Secretary or any other officer or servant of the committee, provided that every such order, except an order of punishment of a menial servant, shall be subject to an appeal to the Central Board preferred by the officer concerned within 30 days of the communication to him of such order.

30. Meetings and decisions of District Waqf Committees.—(1) The Sunni District Waqf Committee shall meet at least once in three months.

(2) The quorum for the meetings of the Sunni District Waqf Committee shall be five if it consists of nine or more members, and, of four if it consists of less than nine members.

(3) The President shall preside at every meeting of the committee, provided that if he is absent, the members present may elect one of themselves as president for such meeting.

(4) The decisions of the Sunni District Waqf Committee shall be by majority of votes of the members present and voting, and in case of an equal division the president of the meeting shall have a second or casting vote.

31. Functions of District Waqf Committees.—Subject to the control of the Central Board as hereinbefore provided, the functions of the Sunni District Waqf Committees shall be—

(a) to inquire into and report to the Central Board the manner in which any waqf in the district is administered ;

(b) to receive and forward to the Central Board with its opinion—

(i) all applications for registration under Section 38 ;

(ii) all accounts submitted by the mutawallis under Section 57 ;

- (c) to discuss and pass the budgets submitted by the mutawallis under Section 57 or to reject or amend such budgets, and in such cases to report its action to the Central Board ;
- (d) to protect and supervise all Muslim religious and charitable buildings not in the charge of any mutawalli and get mutawallis of such waqfs appointed through court, if necessary ;
- (e) to trace out waqf properties illegally alienated and in the possession of trespassers and file suits for their recovery with the previous sanction of Central Board ;
- (f) to make recommendations to the Central Board for the application of funds to such object or objects as it considers desirable in cases of waqfs for charitable or religious purposes in which the object for which the waqf was created is not specified or there is no evidence of user, or in cases in which the object for which the waqf was created has ceased to exist ;
- (g) to notify to the Central Board every change in the mutawalliship of the waqf property or its income or object or other particulars ,
- (h) generally to perform all such duties not inconsistent with this Act as may be entrusted to it by the Central Board ;
- (i) to depute in order to perform the above functions properly, one or more of its members to enter upon and inspect the local waqf properties, and to institute inquiries into the method of administration of the mutawallis.

32. Expenses and income.—All expenses of the Sunni District Waqf Committees shall be met from the Sunni waqf fund, and income realized by such committees shall be credited to such fund.

33. Budget.—(1) Every Sunni District Waqf Committee shall, before the commencement of each financial year, prepare a budget of income and expenditure for such financial year and shall submit the same for approval to the Central Board.

(2) The Central Board shall pass and return the budget after making such modifications as it thinks fit.

(3) If a Sunni District Waqf Committee considers any expenditure not provided for in the budget to be necessary, it may submit a supplementary budget for the approval of the Central Board, but shall not incur any such expenditure without the sanction of the Central Board.

34. Removal of members of District Waqf Committees.—A member of a Sunni District Waqf Committee shall be liable to removal by Sunni Central Board for gross dereliction of duty or for having in any manner so flagrantly abused his position as a member of such committee as to render his continuance as a member thereof detrimental to the public interest, or on the ground that he has become insolvent or insane or is convicted of an offence which in the opinion of the Central Board involves moral turpitude.

35. A member of a Sunni District Waqf Committee may resign his office by giving notice in writing to the Central Board, and, on such resignation being accepted by the Central Board, shall be deemed to have vacated his office.

36. When the place of a member becomes vacant by reason of removal, resignation or death, a new member shall be elected or

co-opted as the case may be in the manner provided for in Section 26 and shall hold office so long as the member whose place he fills would have been entitled to hold office if such vacancy had not occurred :

Provided that no act of the Sunni District Waqf Committee or its officer shall be deemed invalid by reason only that the number of the members of the committee at the time of the performance of such act was less than the number provided for in Section 26.

37. Shia sub-committee.—The Shia Central Board may whenever it considers necessary establish in any district a sub-committee for the supervision of Shia waqfs in any specified area. The constitution, functions and duties of such sub-committees shall be as determined from time to time by the Shia Central Board.

CHAPTER III

REGISTRATIONS OF WAQFS

38. Registration of Waqfs.—(1) Every waqf whether subject to this Act or not and whether created before or after the commencement of this Act shall be registered at the office of the Central Board of the sect to which the waqf belongs.

(2) The mutawalli of every such waqf shall make an application for registration within three months, of his entering into possession of the waqf property, or in the case of waqfs existing at the time of formation of the first Central Board, within three months of the formation of such Central Board.

(3) Application for registration may also be made by a waqif or his descendants or a beneficiary of the waqf, or any Muslim belonging to the sect to which the waqf belongs.

(4) An application under this section shall be accompanied by a copy of the deed or deeds of waqf, together with a statement containing the following particulars so far as known to the applicant ;

- (a) a description of the waqf properties sufficient for the identification thereof ;
- (b) the gross annual income from such properties ;
- (c) the amount of Government revenue and cesses and of all rents and taxes payable in respect of the waqf properties ;
- (d) an estimate of the expenses annually incurred in the realization of the income of the waqf properties ;
- (e) the amount set apart under the waqf for—
 - (i) the salary of the mutawalli and allowance to individuals,
 - (ii) purely religious purposes ;
 - (iii) charitable purposes ; and
- (f) any other particulars which may be prescribed.

(5) The Central Board may require the applicant to supply any further particulars or information that it may consider necessary.

(6) On receipt of an application for registration the Central Board may before registering the waqf make such enquiries as it thinks fit in respect of its genuineness and validity and the correctness of any particulars in the statement filed with the application and when the application is made by any person other than the person holding possession of any property or properties belonging to the waqf, the Central Board shall give notice of the application to the person in possession and hear him, if he desires to be heard, before passing final orders.

(7) An application for registration may be presented either at the office of the Central Board or at the office of the District Waqf Committee of the district in which any part of the waqf property is situated or may be sent by registered post to the office of the Central Board. If the application is presented at the office of the District Waqf Committee, the committee shall forward it with all annexures to the office of the Central Board.

39. Register of Waqfs.—The Central Board shall maintain a register of waqfs which shall contain the following particulars in respect of each waqf and shall also contain a copy or copies of the deed or deeds creating the waqf when available:

- (a) The names of trustees, mutawallis and other persons connected with the administration of the waqf;
- (b) The rule of succession to the office of the trustee (if any) or mutawallis under the deed of waqf or by custom or by usage;
- (c) Particulars of the scheme of administration and the scale of expenditure at the time of registration;
- (d) Particulars of all property relating to the waqfs and all title deeds and documents relating thereto; and
- (e) Such other particulars as may be prescribed.

40. The Central Board may direct a mutawalli to apply for the registration of a waqf, or to supply any information regarding a waqf or may itself collect such information and may cause the waqf to be registered or may at any time amend the register of waqfs.

CHAPTER IV

AUDIT OF ACCOUNTS

41. Audit and report.—(1) The accounts kept by the Central Board and the accounts submitted by mutawallis under Section 57 shall be audited annually or at such other intervals as may be determined by the Central Board, by the auditors appointed under Section 17.

(2) The auditors shall submit their report—

- (a) to the [State Government]¹ in the case of the accounts of the Central Board; and
- (b) to the Central Board, in the case of the accounts of a waqf.

(3) The audit report of the auditors shall, among other things, specify all cases of irregular, illegal or improper expenditure or of failure to recover moneys or other property or of loss or of waste of money or other property caused by neglect or misconduct of the mutawalli.

42. Consideration of auditors' report.—The Central Board shall examine the auditors' report and after calling for the explanation of any person in regard to any matter mentioned therein shall pass such orders on the report as it thinks fit.

43. Recovery of money due under auditors' report.—Every sum² certified to be due from any person by an auditor in his report under Section 41, unless such certificate is modified or cancelled by the Central Board by an order made under Section 42, and every

1. Subs. by the A. O. 1950 for (Provl. Govt.) which had been subs. by the A. O. 1937 for (L. G.).
2. For rules re recovery of sums recover-

able under S. 43 and contributions under S 54 see. not. no. 45 Waqf/9 Waqfs. 1942, d. June, 6, 1942 in Gazette 1942, Pt. I, p. 284-85.

sum due on a modified certificate shall be recoverable from such person by the Central Board.

CHAPTER V

INQUIRY AND SUPERVISION

44. Inquiries by Central Board.—For the purpose of verifying the particulars contained in the statement filed under Section 38 or acting on the report of the auditor submitted under Section 41, the Central Board may enquire into any matter either through any of its officers or any District Waqf Committee.

45. Application for inquiry.—Any member of the community to which the waqf belongs may by an application, supported by an affidavit, apply to the Central Board to institute an inquiry relating to the administration of a waqf, and the Central Board may take such action as it may think fit.

46. Powers of inquiring officer.—For the purposes of an inquiry under this chapter, the inquiring officer or committee shall have the same power of enforcing the attendance of witnesses and production of documents as the civil court has under the Code of Civil Procedure, 1908¹.

CHAPTER VI

LEGAL PROCEEDINGS

47. Suits for directions.—(1) Notwithstanding anything contained in Section 92 of the Code of Civil Procedure, 1908¹ or any other law for the time being in force, the Central Board may apply to the court for direction in all cases of undisposed waqf funds or where the directions in the deed of waqf are no longer sufficient to carry out the intention of the waqif or where any case for the application of the doctrine of *cypres* arises, and the court may direct that the real intention of the waqif be carried out by such means as in the existing circumstances appear to the court to be most appropriate.

²(2) The order of the court giving directions under sub-section (1) shall be appealable to the High Court. * * *

(3) Subject to an appeal under sub-section (2), the directions of the court issued under sub-section (1) shall not be questioned in any civil court and shall in all respects be final and conclusive.

48. Civil suits relating to waqfs.—Notwithstanding anything in the Code of Civil Procedure, 1908¹, to the contrary, a suit to obtain any of the reliefs mentioned in Section 92 of the said Code relating to any waqf to which this Act applies may be instituted by the Central Board without obtaining the consent referred to in that section, or by any person interested in the waqf with the previous sanction in writing of the Central Board and without obtaining the consent referred to in that section, provided that if in such suit the validity or propriety of any order or direction passed or made by the Central Board is challenged, a suit may be instituted without previous sanction after

1. U. C. A., Vol. V, p. 1.

2. This sub-section shall have effect as if it has been enacted on the date of making of the U. P. Act VIII of 1941, made by the Governor in exercise of the powers assumed by

him under S. 93 of the G. of I. Act, 1935, *vide* S. 2 of that Act, which was made on June 28, 1941.

3. The words [or the Chief Court, as the case may be] *omit.* by the A. O. 1950.

giving two months' notice to the Central Board as provided in Section 53.

49. Suits under Religious Endowments Act.—A suit under Section 14 of the Religious Endowments Act, 1863¹, concerning a waqf to which this Act applies may, notwithstanding anything to the contrary contained in that Act, be instituted by the Central Board without obtaining the leave referred to in Section 18 of that Act, and no such suit shall be instituted by any person without the consent in writing of the Central Board.

50. Protection of the Board and committees and their staff.—(1) Save as otherwise provided in this Act, no act done or direction issued by the Central Board, except an order settling the scheme of management of a waqf, shall be questioned in any court.

(2) No suit shall be instituted against the Central Board or any of its members or servants or against any member or servant of a District Waqf Committee for anything done by it or him in good faith under colour of this Act.

51. Compromise of suits by or against mutawallis.—No suit or proceedings in any court by or against a mutawalli of a waqf to which this Act applies, and relating to title to waqf property or to the rights of the mutawalli shall be compromised without the sanction of the Central Board.

52. Notice of suits by mutawallis.—When any suit relating to title to any waqf property or to the rights of a mutawalli is instituted in any civil court, such court shall give notice of such suit to the Central Board at the cost of the plaintiff.

53. No suit shall be instituted against a Central Board in respect of any act purporting to be done by such Central Board under colour of this Act or for any relief in respect of any waqf, until the expiration of two months next after notice in writing has been delivered to the Secretary, or left at the office of such Central Board, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left.

CHAPTER VII

ADMINISTRATION CHARGES

54. Contributions by Waqfs.—(1) Every waqf to which this Act applies shall contribute annually for meeting the expenses incurred in the administration of this Act such sum² not exceeding 5 per cent. of the net annual income of such of its property as is situate in [Uttar Pradesh]³ as the Central Board, subject to the sanction of the [State Government]⁴ may determine:

Provided that in cases of waqfs, part of the income of which is applied for the benefit of the waqf or his descendants or family or any other private purpose, the aforesaid percentage shall not be levied on such part of the income.

1. U. C. A., Vol. I, p. 395.

2. For rules re recovery of sums recoverable under S. 43 and on contribution under S. 54, see not. no. 45 Waqf/9-Waqfs 1942, d. June 6, 1942 in *Gazette* 1942, Pt. I, pp. 284-285.

3. Subs. by the A. O. 1950 for [the United Provinces].

4. Subs. by the A. O. 1950 for (Prov. Govt.) which had been subs. by the A. O. 1937 for (L. G.).

(2) Contributions under this section shall be payable with effect from the date on which this section comes into force.

(3) The Central Board may, in the case of any particular waqf or waqfs, reduce or remit such contributions as it thinks fit.

(4) Such contributions shall, subject to the prior payment of any dues, [to the Government]¹ and any other statutory charge on the waqf property or the income thereof, be a first charge on the income of the waqf.

(5) If a mutawalli or a person in charge of the management or administration of the waqf realizes the income of the waqf and neglects or refuses to pay such contribution he shall also be personally liable for such contribution to the extent of the balance of realizations remaining in his hands after payment of land revenue, cesses and taxes due [to the Government]¹ and local bodies * * *

55. Central Board's power to borrow.—The Central Board shall have power, with the previous sanction of the [State Government]³ to borrow for the purpose of giving effect to the provisions of this Act such amount and on such conditions as the [State Government]³ may determine.

CHAPTER VIII

MUTAWALLIS

56. Appointment of mutawalli.—When there is a vacancy in the office of mutawalli of a waqf and there is no one competent to be appointed under the terms of the deed of waqf, or where the right of any person to act as mutawalli is disputed, the Central Board may appoint any person to act as a mutawalli for such period and on such conditions as it may think fit.

57. Duties of mutawallis.—(1) Every mutawalli shall carry out all directions consistent with the provisions of this Act issued to him by the District Waqf Committee or the Central Board for the proper administration of waqfs.

In particular he shall—

- (a) supply the details of the waqfs in his charge,
- (b) submit within one month after the 31st day of March next following the date on which the waqf has been registered under Section 21 and thereafter within 30 days of the 31st day of March in every year, a full and true statement of accounts in such form and containing such particulars as may be prescribed by the Central Board and verified in manner prescribed by the Code of Civil Procedure, 1908⁴, for verification of pleadings, of all money received or expended by him on behalf of the waqf of which he is the mutawalli in respect of that portion of the waqf property which is situate in ⁵[Uttar Pradesh] during the period of 12 months ending on the 31st day of March preceding

1. Subs. by the A. O. 1950 for [to the Crown] which had been subs. by the A. O. 1937 for [to the Govt.].
2. The words "and this liability may been enforced in the manner aforesaid" omit. by S. 3 of U. P. Act VIII of 1941, made by the Governor in exercise of the powers

assumed by him under S. 93 of the G. of I. Act 1935.

3. Subs. by the A. O. 1950 for (Provl. Govt.) which had been subs. by the A. O. 1937 for (L. G.).

4. U. C. A. Vol. V, p. 1.

5. Subs. by the A. O. 1950 for (the United Provinces).

the submission of such statement or during that portion of the said period during which the provisions of this Act have been applicable to the waqf.

(2) All the details, accounts and statements mentioned in sub-section (1) shall be submitted to the District Waqf Committee and in district where there is no such committee, direct to the Central Board. The mutawalli shall, if and when required, further be bound by himself or by his agent to attend at the audit of his accounts and to give all information required relating to his accounts.

58. Removal of mutawallis by Central Board.—The Central Board may remove a mutawalli from his office if—

- (i) such mutawalli after having once been convicted of an offence punishable under Section 60 is again convicted of any such offence, or
- (ii) such mutawalli is convicted of an offence relating to the waqf property or money which in the opinion of the Central Board renders him unfit to continue to be a mutawalli.

59. Committees of supervision.—(1) Whenever the supervision of a waqf is vested in any existing committee appointed by the waqf or any competent court or authority, such committee shall, notwithstanding anything in the Act, continue to function until superseded by the Central Board under sub-section (2). :

Provided that such committee shall be under the control of the Central Board and shall abide by such directions of the Central Board as are not inconsistent with any directions of the waqf or of the court or authority appointing such committee.

(2) The Central Board may supersede any such committee as aforesaid if it does not in its opinion function properly and satisfactorily, and on such supersession any decree or order of a court or competent authority under which such committee has been constituted shall cease to have any force.

(3) An order passed by a Central Board under sub-section (2) shall be final and shall not be questioned in any court of law.

60. Penalties.—(1) If mutawalli fails without reasonable cause or excuse, the burden of proving which shall be upon him—

- (a) to apply for registration of a waqf as provided in Section 38, or
- (b) to submit statements of particulars or of accounts and returns as required by this Act, or
- (c) to supply information or particulars required by the Central Board or the District Waqf Committee, or
- (d) to allow inspection under the provisions of this Act of waqf properties and deeds and documents relating thereto, or
- (e) to give assistance in enquiries and investigations when called upon to do so by the Central Board or by a District Waqf Committee, a Shia sub-committee or by superintendents or auditors working under the orders of the Central Board, or
- (f) to deliver possession of any waqf property if ordered to do so by the Central Board, or
- (g) to deposit any surplus income in his hands in any recognized bank when directed to do so by the Central Board,

he will, on conviction before a magistrate of the first or second class, be punishable with fine which may extend to Rs. 250 for the first offence, and to Rs. 1,000 for every subsequent offence.

(2) No magistrate shall take cognizance of an offence under subsection (1) otherwise than on a complaint made by any person duly authorized by the Central Board in this behalf.

CHAPTER IX

MISCELLANEOUS

61 Rules.—(1) The Central Board may, subject to the approval of the [State Government]¹, make rules² consistent with this Act for the purpose of carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, the Central Board shall, with the approval of the [State Government]¹ have power to make rules with reference to the following matters :

- (a) all matters expressly required or allowed by this Act to be prescribed or done by the Central Board or District Waqf Committee ;
 - (b) the conduct of business by the Central Board ;
 - (c) the grant of travelling allowance to the members of the Central Board ;
 - (d) the custody and investment of the waqf fund ;
 - (e) the books and accounts to be kept at the office of the Central Board and the District Waqf Committee ;
 - (f) the manner in which the accounts of waqfs shall be audited and published, the time or place of such audit, the form and content of the auditor's reports and the scale of remuneration to be paid to the auditors ;
 - (g) the method of calculating the income of a waqf for the purpose of levying contribution under this Act ; and
 - (h) the fee to be levied on applications before the Central Board, Sunni District Waqf Committees and Shia sub-committees under this Act, or on applications for copies of proceedings or other records of the Central Boards or Sunni District Waqf Committees ;
 - (i) the method of election of members and Presidents of the Central Board and Sunni District Waqf Committees.
- (3) All rules framed under this section shall be published in the [official Gazette]³ and shall thereafter have the force of law.

62. Names of members and Presidents to be notified.—The names of the members and Presidents of the Central Boards and District Waqf Committees shall be published in the [official Gazette]³ as soon as possible after their election or co-option, as the case may be.

63. Budgets of Central Boards and District Waqf Committees.—A copy of the budget of the Central Boards shall be sub-

1. Subs. by the A. O. 1950 for (Provl. Govt.) which had been subs. by the A. O. 1937 for (L. G.).
2. For rules re Sunni Waqf Board, see not. no. 3247/V, d. July 19, 1945, in *Gaz.*, d. Aug. 4, 1945, Pt. VIII, pp. 259—264 and for rules re Shia

Waqfs Board, see not. no. 8459, d. June 15, 1945, in *Gaz.*, d. July 7, 1945, Pt. VIII, p. 226—232, respectively.

3. Subs. for [Gazette] by the A. O. 1937.

mitted to the [State Government]² for information. The Central Board shall also give such information and submit such reports, returns and statement, as may be called for by the [State Government]².

64. Extension of time.—The Central Board may, if it is satisfied that there is sufficient cause for so doing, extend time within which any act is required or ordered to be done under this Act.

65. Waqf fund.—All moneys realized under Section 54 and all moneys realized from fees in respect of proceedings before the Central Board or District Waqf Committees and all other moneys realized under this Act, shall form a fund to be called the ["Uttar Pradesh"]³ Shia Waqf Fund" or "[Uttar Pradesh]³ Sunni Waqf Fund", as the case may be. Such fund shall be under the control of the Central Board subject to the general supervision of the [State Government]² and shall be applied to the following expenses which shall be met exclusively from that fund :

- (a) repayment of any loan incurred under Section [55]⁴ and payment of interest thereon;
- (b) payment of the cost of audit of waqf fund ;
- (c) payment of the salary and allowances of the Secretary and staff of the Central Board and the Secretary and staff of the District Waqf Committees under the Central Board ;
- (d) payment of travelling allowances to the President, members, Secretary and staff of the Central Board and the District Waqf Committees ;
- (e) payment of all expenses incurred by the Central Board and the District Waqf Committees in the performance of the duties imposed and the exercise of the powers conferred by this Act.

66. Surplus and accumulation.—All money that may be available as surplus or accumulation out of the income of waqf shall be spent on those very waqfs in the manner determined by the Central Board.

67. [*Disposal of fine*]¹

68. Liability of State Government for expenses.—[The State Government]⁵ shall not be liable for any expenditure incurred in the administration of this Act.

CHAPTER X

SAVINGS AND REPEAL

69. Savings.—Nothing in the following Regulations, Acts and provisions shall apply to any waqf to which this Act applies.

(i) Bengal Regulation, XIX of 1801.⁶

2. *Subs.* by the A. O. 1950 for (Provl. Govt.) which had been *subs.* by the A. O. 1937 for (L. G.).
3. *Subs.* by the A. O. 1950 for [the United Provinces].
4. *Subs.* for "30" by S. 4 of U. P. Act VIII of 1941, made by the Governor in exercise of the powers assumed by him under S. 93 of the G. of I.

Act, 1935.

1. S. 67 *omit.* by the A. O. 1937.
5. *Subs.* by the A. O. 1950 for (Provl. Govt.) which had been *subs.* by the A. O. 1937 for (the Govt.).
6. The Bengal Charitable Endowments, Public Buildings and Escheats Reg. 1810. The Bengal Code, 1939, Vol. I, p. 143.

- (ii) Section 5 of the Religious Endowments Act, 1863¹.
- (iii) The Charitable Endowments Act, 1890².
- (iv) The Charitable and Religious Trust Act, 1920³.
- (v) Sections 5 to 10 of the Musalman Waqfs Act, 1923⁴.

70. Repeal.—Sections 3 and 4 of the Musalman Waqfs Act, 1937⁴ in their application to [Uttar Pradesh]⁵ * * * are hereby repealed.

71. Recovery of dues by distress.—Every sum⁷ recoverable under Section 43 and the contribution under Section 54 may be recovered by the Central Board by means of distress and sale of movable property belonging to the person liable for payment, in accordance with the rules framed by the [State Government]⁸ in this behalf.

SCHEDULE

1. Waqfs governed by Act XV of 1878⁹.
2. Wazir Begum Trust, Lucknow.
3. Agha Abbu Sahib Trust, Lucknow.
4. Shah Najaf Trust, King's Side, Lucknow, and Queen's Side, Lucknow.
5. Kazmain Trust, Lucknow.

THE UTTAR PRADESH MUSLIM WAQFS (AMENDMENT) ACT, 1951¹⁰

(U. P. Act No. XXXIV OF 1951)

CONTENTS

Sections	Sections
1. Short title and commencement.	Act XIII of 1936.
2.	5. Deletion of Section 11 of U. P. Act XIII of 1936.
3. Dissolution of the First Sunni Central Board.	6. Reconstitution of the Sunni Central Board.
4. Amendment of Section 10 of U. P.	

Authoritative English Text of the Uttar Pradesh Muslim Waqfs (Sanshodhan) Adhiniyam, 1951

AN ACT

to amend the U. P. Muslim Waqfs Act, 1936, for certain purposes

Whereas it is expedient to amend the U. P. Muslim Waqfs Act, 1936, for the purposes hereinafter appearing ;

It is hereby enacted as follows :—

1. Short title and commencement.—(1) This Act may be called the U. P. Muslim Waqfs (Amendment) Act, 1951.

- | | |
|---|--|
| <ol style="list-style-type: none"> 1. U. C. A., Vol. I, p. 395. 2. <i>Ibid</i>, Vol. III, p. 332. 3. <i>Ibid</i>, Vol. VII, p. 117. 4. <i>Ibid</i>, Vol. VII, p. 704. 5. Subs. by the A. O. 1950 for [the United Provinces]. 6. The words [of Agra and Oudh] omit. by the A. O. 1950. 7. For rules re recovery of sums recoverable under S. 43 and contributions under S. 54, see not. no. 45- | <ol style="list-style-type: none"> Waqfs/9 Waqfs 1942, d. June 6, 1942, Pt. I, pp. 284—285. 8. Subs. by the A. O. 1950 for [Prov. Govt.] which had been subs. by the A. O. 1937 for [L.G.]. 9. The Husainabad Endowment Act, 1878, Vol. I. 10. For S. O. R. and other particulars see footnote under the United Provinces Muslim Waqfs Act, 1936 (U. P. Act XIII of 1936), <i>supra</i>. |
|---|--|

(2) This section and Section 6 shall come into force at once and the remaining provisions of the Act shall come into force on such date,¹ not earlier than three months and not later than six months from the date this section comes into force, as the State Government may, by notification in the official Gazette appoint in this behalf, and different dates may be appointed for different provisions of this Act.

2. (Incorporated in Section 7 of the United Provinces Muslim Waqfs Act, 1936).

3. Dissolution of the First Sunni Central Board.—The first Sunni Central Board established under Section 7 of the Principal Act shall be and is hereby dissolved from the date this section comes into force.

4. Amendment of Section 10 of U. P. Act XIII of 1936.—The second proviso to Section 10 of the Principal Act shall be omitted.

5. Deletion of Section 11 of U. P. Act XIII of 1936.—Section 11 of the Principal Act shall be deleted.

6. Reconstitution of the Sunni Central Board.—Notwithstanding that Sections 2 and 3 shall come into force from the date of notification under sub-section (2) of Section 1, the elections for the reconstitution of the Sunni Central Board in accordance with the provisions of Section 7 of the Principal Act as amended by this Act, may be held after Section 1 has come into force but any election so held shall not take effect till the enforcement of the said sections.

THE NAIK GIRLS' PROTECTION ACT, 1929

(U. P. ACT NO. II OF 1929)

CONTENTS

<i>Sections</i>	<i>Sections</i>
1. Short title and extent.	Section 3 or Section 4.
2. Power of the District Magistrate to demand information.	4b. Finality of District Magistrate's orders.
3. Power of the District Magistrate to order restriction of movements of Naik minor girls.	5. Penalty for failure to furnish information.
4. Power of the District Magistrate to arrange for custody of Naik minor girls.	6. Penalty for failure to obey order of District Magistrate.
4a. Consequences of proceedings under	7. Power of State Government to make rules.
	8. Definitions.

[Received the assent of the Governor on February 12, 1929, and of the Governor-General on March 11, 1929, and was published² under Section 81 of the Government of India Act on March 30, 1929.]

Whereas it is expedient to terminate the custom whereby minor girls of the Naik caste in the United Provinces are trained for prostitution, and whereas the previous sanction of the Governor-General has been obtained under sub-section (3) of Section 80-A of the Government of India Act to the passing of this Act; It is hereby enacted as follows :—

1. The Act came into force on July 16, 1952, see Not. No. 73-Waqfs/XXIII-A-2 Waqfs-52, d. July 9,

1952 in Gaz., d. July 12, 1952, Pt. I, p. 623.

2. See Gaz. 1929, Pt. VIII, pp. 1-2.

Prefatory Note.—For S. O. R., see Gaz., 1927, Pt. VIII, p. 233; for R. S. Com., see *ibid*, 1928, Pt. VIII, pp. 551—553; for discussion, see L. C. Pro., d. Oct. 29, 1927 Oct. 31, 1927, Dec. 21, 1928, Feb., 1, 1929, and Feb. 2, 1929, in Vol. XXXV, pp. 64 67 and 183—205, and Vol. XL, pp. 572-573, and Vol. XLI, pp. 387—431, and 481—490, respectively.

This Act was made by the Governor in exercise of the powers assumed by him by virtue of the Proclamation, d. Nov. 3, 1930, issued under Section 93 of the G. of L. Act, 1935, and was published with S. O. R., in Gaz., 1942, Pt. VII-A, p. 39. It was re-enacted and continued by U. P. Act XIII of 1948.

1. Short title and extent.—(a) This Act may be called the Naik Girls' Protection Act, 1929.

(b) It extends to the whole of [Uttar Pradesh]¹.

Note.—This Act has been extended to the areas mentioned in column I of this table under the Act or Order mentioned in column 2 and enforced in such areas under notification, if any, mentioned in column 3 with effect from the date mentioned in column 4 against each such area.

Areas	Act or Order under which extended	Notification, if any, under which enforced	Date from which enforced
1	2	3	4
1. Rampur district.	Rampur (Application of Laws) Act, 1950.	No. 2868 (a) d. Oct. 30, 1950 in Gaz. d. Nov. 4, 1950, Pt. I	November 4, 1950.
2. Banaras district.	Banaras (Do) Order, 1949.	No. 2868, d. Oct. 30, 1950 in Gaz. d. Nov. 4, 1950, Pt. I.	Ditto.
3. Tehri-Garhwal district.	Tehri-Garhwal (Do) Order, 1949.	No. 2863 (b), d. Oct. 30, 1950 in Gaz., d. Nov. 4, 1950, Pt. I.	Ditto.

2. Power of the District Magistrate to demand information.—The District Magistrate may from time to time by general or special order which shall be published in the prescribed manner require any member or members of the Naik caste for the time being present within the local limits of his jurisdiction to appear before him and furnish him with such information as may be prescribed for the purposes of this Act.

3. Power of the District Magistrate to order restriction of movements of Naik minor girls.—The District Magistrate may from time to time by order in writing direct any person or persons having under his or their guardianship or control a minor girl or girls of the Naik caste within the local limits of his jurisdiction to take such steps as he may by the said order specify to restrict or otherwise regulate the movements of such minor girl or girls or to remove her or them to the Kumaun Division in order to prevent her or their being trained to the profession of prostitution or living in immoral surroundings.

4. Power of the District Magistrate to arrange for custody of Naik minor girls.—If the District Magistrate is of opinion that there is danger that a minor girl of the Naik caste within the local limits of his jurisdiction may be sold, let for hire, trained or otherwise disposed of with the intent that she shall be employed for the purpose of prostitution or for any unlawful and immoral purpose, he may

1. Subs. by the A. O. 1950 for [the United Provinces].

order that she shall be sent to a settlement and there detained for such period as may be prescribed or that she shall be placed under the guardianship of any person of the same faith who is willing and in the opinion of the District Magistrate fit to have charge of her and may take such steps as may in his opinion be necessary for the enforcement of such order.

¹[4-A. Consequences of proceedings under Section 3 or Section 4.—When the District Magistrate passes an order under Section 3 or Section 4 in respect of any minor girl of the Naik caste—

- (a) the provisions of the Guardians and Wards Act, 1890, shall, to the extent they relate to the guardianship of the person of a minor, cease to apply to such girls for so long as any such order passed by the District Magistrate remains in force, and the appointment, if any, of the guardian of the person of any such girl made under the provisions of the Guardians and Wards Act, 1890, before the passing of any order shall be deemed to have been terminated;
- (b) The manager of the settlement to which such girl is sent for detention, or the person under whose guardianship she may be, or has been placed in accordance with the provisions of Section 4, shall be responsible for the custody, support, health and education of the girl and, with the previous permission of the District Magistrate and subject to such conditions as may be prescribed in this behalf, shall have the power to arrange for and solemnize her marriage with a person of the same faith, and
- (c) the District Magistrate may from time to time pass orders regulating the conduct or proceedings of the manager or the guardian as aforesaid, and may remove any such girl from the custody of any such guardian or manager and send her to any other settlement, or place her in the custody of any other guardian.

4-B. Finality of District Magistrate's orders.—All orders passed by the District Magistrate in accordance with the provisions of this Act or the rules made thereunder shall be final and not subject to appeal or revision in any court and shall not be liable to be questioned in any civil court.]

5. Penalty for failure to furnish information.—Whoever, having been required by a District Magistrate under Section 2 of this Act to appear before him and furnish him with information without lawful excuse fails so to appear or refuses or fails to furnish information which it was within his power to furnish or furnishes false information shall be punished with simple imprisonment for a term not exceeding six months or with fine not exceeding two hundred and fifty rupees or with both :

Provided that a substantive sentence of imprisonment shall not be passed against a person who is convicted under this section for the first time.

Ss. 4-A and 4-B *ins.* by S. 2 of U. P. Act II of 1942, made by the Governor in exercise of the powers assumed by him under S. 93 of the

G. of I. Act, 1935. It was re-enacted and continued by S. 2 and Sch. of U. P. Act XIII of 1948.

6. Penalty for failure to obey order of District Magistrate.—Whoever without lawful excuse disobeys, or resists, or in any way obstructs the execution of, any order of a District Magistrate made under Section 3 or Section 4 [or Section 4-A]¹ of this Act shall be punished with imprisonment of either description for a term not exceeding one year or with fine not exceeding five hundred rupees or with both.

7. Power of State Government to make rules.—The [State Government]² may make rules consistent with this Act for carrying out the purposes of this Act, and may by such rules prescribe the nature of the orders which may be made by the District Magistrate under this Act including an order exempting any member or class or group of Naiks from the operation of Sections 2 and 3 of this Act and the conditions under which such orders may be made; provided that the power of the [State Government]² to make rules under this section shall be subject to the condition that the rules shall be made after previous publication in the [Official Gazette]³ and in the localities mainly occupied by Naiks; and after an opportunity has been given to ⁴[both ⁵(Houses) of the (State)⁶ Legislature] to discuss them; provided further that the rules shall not take effect until they have been published in the [Official Gazette]³ in their final form.

Note.—For rules, see not. no. 1373(I)/VI—1483-1924, d. Sep. 22, 1931, in *Gaz.* 1931, Pt. VIII, p. 762, no. 920-G/XV—704-1935, d. July 23, 1936, in *ibid.* 1936, Pt. I, p. 847, no. 1511-G/XV—704-1935, d. July 21, 1938, in *ibid.* 1938, Pt. I, p. 885, and no. A-435/XV—417-41, d. Feb. 11, 1942, Pt. I-A, p. 42.

8. Definitions.—In this Act—

- (a) “minor girl” means a girl who is under the age of eighteen years,
- (b) “prescribed” means prescribed by rules under this Act.
- (c) “settlement” means any home or institute for the custody of girls declared⁷ by the [State Government]² to be a settlement for the purposes of this Act, provided that such home or institute shall belong to and be managed by persons of the same religion as that of the girls concerned,
- (d) “member of the Naik caste” includes a prostitute born of Naik parents or of a Naik prostitute.

1. *Ins.* by S. 3 of U. P. Act II of 1942, made by the Governor in exercise of the powers assumed by him under S. 93 of the G. of I. Act, 1935. It was re-enacted by U. P. Act XIII of 1948.

2. *Subs.* by the A. O. 1950 for [Prov. Govt.] which had been *subs.* by the A. O. 1937 for [L. G.].

3. *Subs.* for [Gazette] by the A. O. 1937.

4. *Subs.* for the words [the Council] by *ibid.*

5. *Subs.* by the A. O. 1950 for [Chambers].

6. *Subs.* by *ibid.* for [Prov.].

7. The Rescue Home for Naik girls at Haldwani and the Naik Balika Ashram at Meerut were declared as settlements in nots. no. 1385-G/XV—614-35, d. Sep. 7, 1937, and no. 917-G/XV—746-1935, d. May 4, 1938, published in *Gaz.*, 1937, Pt. I, p. 1621, and *ibid.* 1938, Pt. I, p. 634, respectively.

THE UNITED PROVINCES NATIONAL PARKS ACT, 1935

(U. P. ACT No. I OF 1935)

CONTENTS

Sections

1. Short title and extent.
2. Definitions.
3. Constitution of a national park.
4. Constitution of other national parks.
5. Boundaries of parks.
6. Control of parks and functions and duties of controlling authority.
7. Saving of rights in a park.
8. Purposes for which a park may be entered.

Sections

9. Prohibition of certain acts in a park.
10. Power to make rules.
11. Penalties.
12. Power to arrest without warrant and power of search.
13. Saving.

SCHEDULE

Adapted and modified by the Government of India (Adaptation of Indian Laws) Order, 1937.

Adapted and modified by the Adaptation of Laws Order, 1950.

[Received the assent of the Governor on March 23, 1935, and of the Governor-General on April 30, 1935, and was published¹ under Section 81 of the Government of India Act, 1919, on May 11, 1935.]

AN ACT

to provide for the establishment of national parks and the preservation of wild animal life or other objects of scientific interest therein, and for incidental matters.

Whereas it is expedient to make provision for the establishment of national parks, and whereas the previous sanction of the Governor-General has been obtained under sub-section (3) of Section 80-A of the Government of India Act, it is hereby enacted as follows :—

Prefatory Note.—For S. O. R., see Gazette 1934, Pt. VIII, p. 245; for R. S. Com, see *ibid* 1935, Pt. VII, pp. 7-8; for discussion, see L. C. Pro. dated December 12, 1934, and February 25, 1935 in Vol. LXV, pp. 361—366 and Vol. LXVI, p. 177, respectively.

1. Short title and extent.—(1) This Act shall be called the United Provinces National Parks Act, 1935.

(2) It shall come into force on such date as the [State Government]² may, by notification in the [Official Gazette]³ appoint in this behalf.

Note.—The Act came into force on August 8, 1936, see Notification No. 542-I/XIV—235(1)—1933, dated August 6, 1936, in Gazette 1936, Pt. I, p. 891.

This Act has been extended to the areas mentioned in column 1 of this table under the Act or Order mentioned in column 2 and enforced in such areas under noti-

Areas	Act or Order under which extended	Notification, if any, under which enforced	Date from which enforced
1	2	3	4
1. Rampur district.	Rampur (Application of Laws), Act 1950.	.. ..	Dec. 30, 1949

1. See Gaz. 1935, Pt. VII, pp. 45—47.
2. Subs. by the A. O. 1950 for [Provl. Govt.] which had been subs. by the

A. O. 1937 for [L. G.].
3. Subs for (Gaz.) by the A. O. 1937.

2. Banaras district.	Banaras (Do.) Order, 1949.	No. 3262(1)/ XVII d. Nov. 30, 1949.	Nov. 30, 1949.
3. Tehri-Garhwal district.	Tehri-Garhwal (Do.) Order, 1949.	Ditto.	Do.

2. Definitions.—In this Act and in rules made under this Act, unless inconsistent with the context—

(1) “Animal” means any mammal, reptile (excluding snakes other than python), or bird.

(2) “Forest Officer” means a Forest Officer as defined in Section 2 of the Indian Forest Act, 1927, and includes any person appointed for carrying out the purpose of this Act.

(3) “Park” means a national park constituted under this Act.

(4) “Trap” includes any contrivance or device by means of which an animal can be captured.

(5) “Weapon” includes any firearm or ammunition therefor, or any other instrument capable of propelling a projectile, or capable of being propelled or used in such a manner that any animal can be killed or injured thereby.

3. Constitution of a national park.—The area defined in the Schedule to this Act is hereby constituted a national park for the propagation and preservation therein of wild animal life or other objects of scientific interest.

Note.—For the altered boundaries of the park specified in the Schedule, see Notification No. 721/XIV—235 (1)-1933, dated July 8, 1940, in Gazette, 1940, Pt. I, p. 562; the altered boundaries are reproduced in footnote under the Schedule.

4. Constitution of other national parks.—The [State Government]¹ may, by notification in the [Official Gazette]², constitute any other Government forest area a national park for the purpose of this Act, and any park so constituted shall be deemed to be constituted under this Act, provided that no such notification shall be made, except on the recommendation of a resolution passed by [both Houses of the State Legislature]³.

5. Boundaries of parks.—The boundaries of any park shall not be altered, and no portion of such park shall be capable of alienation, except on the recommendation of a resolution passed by [both Houses of the State Legislature]³.

6. Control of parks and functions and duties of controlling authority.—(1) Subject to the control of [the State Government]⁴ the Chief Conservator of Forests shall be the authority to control, manage and maintain any park constituted under this Act, and for that purpose within a park—

(a) may construct such roads, bridges, buildings and fences and carry out such other works as he may consider necessary for the purposes of such park; and

fication if any, mentioned in column 3 with effect from the date mentioned in column 4 against each such area.

1. Subs. by the A. O. 1950 for [Provl. Govt.], which had been subs. by the A. O. 1937 for [G. in C.].
2. Subs. for [Gazette] by the A. O. 1937.
3. Subs. for [both chambers of the

- Provincial Legislature] by the A. O. 1950 which had been subs. for [the U. P. L. C.] by the A. O. 1937.
4. Subs. by the A. O. 1950 for [the Provl. Govt.] which had been subs. for [Govt.] by A. O. 1937.

- (b) shall take such steps as will ensure the security of animal life in such park and the preservation of such park and the animals therein in a natural state; and
- (c) may permit the erection of buildings for the accommodation of visitors, or of shops or other undertaking; provided that arrangements are made for the proper control of any such undertaking by the Chief Conservator of Forests.

(2) The Chief Conservator of Forests may appoint or utilize from time to time such officers and servants of the Forest Department as may be necessary for the carrying out of the objects of this Act.

7. Saving of rights in a park.—No right within a national park which has been admitted and recorded by a Forest Settlement Officer under the Indian Forest Act, 1878, or under the Indian Forest Act, 1927, or which has been granted before the passing of this Act, shall be altered or interfered with, except by the consent of the right-holder or grantee affected thereby.

8. Purposes for which a park may be entered.—(1) No person shall enter or reside in a park otherwise than in accordance with rules made by the [State Government]¹.

(2) No person shall enter or reside in a park, except for the purposes of—

- (a) health, study or recreation, or matters incidental thereto,
- (b) travel or transport along such routes as may be defined by rules, and
- (c) transaction of any lawful business within a park.

9. Prohibition of certain acts in a park.—Subject to the exemptions provided below, it shall not be lawful for any person other than an officer or servant of the Forest Department—

- (a) to convey into a park, or within the confines thereof to be in possession of any explosive, trap or poison, except with the permission of the Chief Conservator of Forests or of any officer of the Forest Department authorized by him to grant such permission and subject to the provisions of this Act and of the rules made under this Act; provided that any person entitled under the Indian Arms Act, 1878² or any rule made thereunder to carry or possess arms of any kind in the area in which a park is situated may, after giving due notice to the Chief Conservator of Forests, or such officer aforesaid, convey into or possess within a park such arms and ammunition therefor;
- (b) within a park to kill, injure, capture or disturb any animal, or to take or destroy any egg or nest of any bird; provided that any dangerous animal may be killed in defence of human life; and

provided also that, with the permission of the Chief Conservator of Forests, any animal may be killed to prevent injury to life or property;

- (c) wilfully or negligently to cause damage by fire or otherwise to the park or any object therein;

1. Subs. by the A. O. 1950 for (Provl. Govt.) which had been subs. by the

A. O. 1937 for (L. G.).
2. U. C. A. Vol. II, p. 484.

- (d) except with the permission of the Chief Conservator of Forests, to introduce any animal, or wilfully to permit any domestic animal to enter, into a park ;
- (e) to remove from a park any animal, whether alive or dead, other than an animal lawfully introduced into such park, or any part of an animal :

Provided that clauses (a), (d) and (e) shall not apply to any ¹[person in the service of the ²Government] entering the park on duty, and that the clauses (d) and (e) shall not apply to holders of rights and concessions to the extent permitted under a Forest Settlement.

10. Power to make rules.—The ³[State Government] may make rules for the purposes of carrying into effect the provisions of the Act, and in particular as to all or any of the following matters :

- (a) the powers and duties of officers and servants of the Forest Department in regard to—
 - (i) the exclusion of members of the public from any area or areas within a park ;
 - (ii) the killing, capturing or impounding of any animal within a park, and the disposal of such animal ;
 - (iii) the disposal of any animal, vegetable or mineral or other product of a park ;
- (b) the conditions subject to which a person may enter or reside in a park under Section 8, and the periods of times during which a park or any portion thereof shall be open to the public ;
- (c) the conditions under which the services or attendance of officers or servants of the Forest Department may be obtained by the person entering, passing through or sojourning within a park, and the fees to be paid in respect of such services or attendance ;
- (d) the fees (if any) to be paid for permission under Section 8 to enter or reside in a park, for the admission of animals, or of motor cars or other vehicles, for the taking of photographs within a park, or for any other purpose connected with the use and enjoyment of a park ;
- (e) the protection and preservation of a park and of the animals and the property therein ;
- (f) the regulation of traffic and carriage of passengers in a park, the points by which persons may enter, and the routes by which they may pass through a park ;
- (g) the protection from defacement by writing or otherwise of any tree, bridge, rock, fence, seat or other object in a park ;
- (h) the power to compound offences ;
- (i) the delegation of his powers by the Chief Conservator of Forests.

Note.—For rules re. the Hailey National Park, see not, No. 252-II/XIV—35 (1)-1933, d. April 23, 1936, in *Gaz.* 1936, Pt. VIII, pp. 107-108.

11. Penalties.—Whoever does any act in contravention of any of the provisions of this Act, or of any rules made under this Act, shall

1. Subs. by the A. O. 1937 for [Government Official]
2. Subs. by the A. O. 1950 for [Crown].

3. Subs. by the A. O. 1950 for [Provl. Govt.] which had been subs. by the A. O. 1937 for [L. G.].

be punishable with imprisonment for a term which may extend to one month, or fine which may extend to five hundred rupees or both.

(2) Any animal or part thereof in respect of which an offence has been committed under this Act, and any weapon or trap used in committing any such offence, shall be liable to confiscation. Such confiscation may be in addition to any other punishment prescribed for such offence.

12. Power to arrest without warrant and power of search.—(1) In respect of an offence punishable under Section 11 of this Act such of the provisions of Sections 64 to 68 of the Indian Forest Act, 1927, as are applicable shall apply as if such offence were a forest offence punishable under the Indian Forest Act, 1927.

(2) Any Forest Officer or Police Officer may, without a warrant, search within a park any place, building, tent, vehicle or receptacle reasonable suspected to contain anything liable to confiscation under sub-section (2) of Section 11, and may seize and retain any such thing wherever found.

13. Saving.—Nothing in this Act shall affect or limit the operation of the provisions of the Indian Forest Act, 1927, in respect of any area constituted a park under this Act.

SCHEDULE

DESCRIPTION OF BOUNDARIES OF THE NATIONAL PARK REFERRED TO IN SECTION 3

North—From the Sultan bungalow down the Sanguri sot to Gairal, thence down to left bank of the Ramganga river to Runani parao, thence westwards down the Patli Dun road to Boxar bridge.

West—Thence west and south down the left bank of the Ramganga river to Kalagarh.

South—Thence eastwards along the reserved forest boundary to reserved forest boundary pillar no. 795 where it meets the boundary of rights area no. 4 of the Kalagarh reserve. Thence along the boundary of rights area no. 4 to its junction with the Koti rao. Thence up the Koti rao to its junction with the Malani Jamnagar road. Thence eastwards along this road to its junction with the Bijrani sot.

East—Thence up the Bijrani sot and the Rettipani rao to its head. Thence in a straight line to the head of the Bara Panod. Thence down the Bara Panod to its junction with the Ramnagar-Ranikhet road. Thence along the road to Dhangarhi. Thence along the Dhangarhi-Sultan cart road to Sultan, the starting point.

Note.—Boundaries altered as follows by not. No. 721/XIV—235(1)—1933, d. July 8, 1940, published in *Gaz.* 1940, Pt. I, p. 562.

Northern Boundary—From the junction of the Ramnagar-Ranikhet, Public Works Department road with the Dhangarhi sot up the left bank of the Dhangarhi sot to its junction with the Gajar sot; thence up the left bank of the Gajar sot for a short distance, to its junction with the Sultan-Dhangarhi cart road; thence up that cart road to its junction with the Sultan-Dhikala motor road about 100 yards west of Sultan Rest House; thence along a cut line northwards to one of the branches of the Sanguri sot; thence down the centre of this branch of the Sanguri sot to its junction with the main Sanguri sot; thence down the main Sanguri sot to its junction with the Ramganga river near Gairal Rest House. Thence along the left edge of the water of the main stream of the Ramganga river (or, if there is more than one stream of approximately the same size, along the left edge of the water of the left or southerly main branch of the Ramganga river) to a point due East of Rohini parao thence due

West in a straight line to Rohini parao : thence along the main Patli Dun cart road to its junction with the motor road at Pucheri chaor. Thence westwards along the motor road to its junction with Baksar-Tumeria motor road thence from this motor road junction in a straight line (demarcated on the ground) running S.S.-E. to the Lidpani sot bridge on the Dhikala-Boksar cart road ; thence in another straight line (demarcated on the ground) running S. S.-W to a point (demarcated on the ground) at the foot of the right high bank of the Jara sot : thence down the right bank of this sot to its junction with the Ramganga river near Boksar.

Western Boundary—Thence along the left edge of the water of the main stream of the Ramganga river to the point at Lakarghat where the hills cease ; thence along a cut line along the foot of the hills in a S. E. direction to Lakarghat Forest Guards chowki : thence in a straight line (demarcated on the ground) to external divisional boundary pillar No. 827.

Southern Boundary—Thence eastwards along the reserved forest boundary to reserved forest boundary pillar No. 975 where it meets the boundary of rights area No. 4 of the Kalagarh reserve ; thence along the boundary of rights area No. 4 to its junction with the Koti Rau. Thence up the left bank of the Koti Rau to its junction with the Jamnagwar-Malani Road. Thence eastwards along this road, which forms the northern boundary of the Laldhang and Dhela forest blocks, to its junction with the Malani sot. Thence eastwards along the Malani-Bijrani cart road, which forms the northern boundary of Dhela forest block, compartment g and of Sawaldech forest block, to its junction with the Bijrani sot.

Eastern Boundary—Thence in a northerly direction along a cut line up the left bank of the Bijrani sot and the left bank of the Rattapani Rau to its head on the Akhiri Danda Ridge. Thence in a straight line to the Rattapani pack. Thence down the right bank of the Bara Panod to its junction with the Ramnagar Ranikhet Public Works. Department road. Thence along this road to its junction with the Dhangarhi sot.

THE NORTHERN INDIA CANAL AND DRAINAGE ACT, 1873

(ACT No. VIII OF 1873)

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AN ACT

to regulate Irrigation, Navigation and Drainage in Northern India.

Preamble.—Whereas, throughout the territories to which this Act extends, the Provincial Government is entitled to use and control for public purposes the water of all rivers and streams flowing in natural channels, and of all lakes and other natural collections of still water; and whereas it is expedient to amend the law relating to Irrigation, Navigation and Drainage in the said territories; It is hereby enacted as follows :

Prefatory Note.—For S. O. R. see Gaz. of L., 1872, Pt. V, p. 651; for R. S. Com. see *ibid.*, p. 747 and *ibid.* Supplement, 1873, p. 223; for Proceedings in Council see *ibid.*, Supplement, pp. 919, 956 and 1081; *ibid.*, 1873, Supplement, pp. 54, 156, 223, 246, and 279.

The Act has been extended, by not. under the Scheduled Districts Act, 1874, (Act XIV of 1874), *rep.* by the A. O. 1917, to the Tarai Parganas—see not. no. 1954, d. Sept. 22, 1876, in Gaz. 1876, Pt. II, p. 1279.

PART I

Preliminary

1. Short title.—This Act may be called the Northern Indian Canal and Drainage Act, 1873.

Scope.—When the accused has not caused destruction of any property by damaging the canal or any of its banks or openings in any manner, but only continued to take water even after the end of their turn, no offence under Section 430 I. P. C. is committed and the accused must be dealt with under this Act².

Local extent.—It extends to [Uttar Pradesh]³ and [the state of Punjab and Delhi]³ and applies to all lands whether permanently settled, temporarily settled or free from revenue.

Note. This Act has been extended to the areas mentioned in column I of this table under the Act or Order mentioned in column 2 and enforced in such areas under notification, if any, mentioned in column 3 with effect from the date mentioned in column 4 against each such area.

1. The provisions of this Sec. do not apply to State tube-wells, see S. O. of U. P. Act XII of 1936.
2. *Mohammad Raza v. Emperor*, 1937 L. 196.
3. The words [United Provinces and the Provinces of East Punjab and Delhi] were *subs.* by the Indian Independence (Adaptation of Central Acts and Ordinances) Order, 1948 for [territories which on the 11th February, 1873, were respectively

under the Government of the Lieutenant Governors of the North-Western Provinces and the Punjab, and under the administration of the Chief Commissioners of Oudh and the Central Provinces]. Later the words [Uttar Pradesh, States and Punjab] were respectively *subs.* by the A. O. 1950 for the words [United Provinces, Provinces and East Punjab].

Areas	Act or Order under which extended	Notifications, if any, under which enforced	Date from which enforced
1	2	3	4
1. Rampur district	Rampur (Application of Laws) Act, 1950.	No. 3448/ XVII—345-49, d. Dec. 4, 1951.	Dec. 8, 1951
2. Banaras district	Banaras (Do) Order, 1949. Tehri-Garhwal	No. 3448/ XVII—204 50, d. Dec. 4, 1951. No. 3448/	Ditto.
3. Tehri-Garhwal district.	(Do) Order, 1949.	XVII—344-49, d. Dec. 4, 1951.	Ditto.

* * *

Note:—In respect of any State tube-well, the provisions of this Act (Act VIII of 1873), except the provisions of S. 1, cls. (4) and (7) of S. 3, S. 4, S. 5, and P s. VI and VII, shall be deemed to apply in like manner as if such State tube-well were a canal within the meaning of this Act. Provided that in the application of this Act every reference therein to a "Canal Officer" (except in S. 27 of that Act), a "Superintending Canal Officer," a "Divisional Canal Officer" or a "Sub-Divisional Canal Officer" shall be deemed to be a reference to a "Tube-well Officer," a "Superintending Engineer," a "Divisional Officer" or a "Sub-Divisional Officer," respectively. Also provided that certain modifications shall be made in Ss. 6, 8, 27, 32, 68, and 70 of this Act. See S. 6 and Sch. of U. P. Act XII of 1936.

2. [Repeal of Acts.] Rep. by Act XII of 1873.

3. Interpretation clause.—In this Act, unless there be something repugnant in the subject or context.—

(1) "canal"¹ includes—

(a) all canals, channels and reservoirs constructed, maintained or controlled by [the State Government]² for the supply or storage of water,

(b) all works, embankments, structures, supply and escape channels connected with such canals, channels or reservoirs;

(c) all water-courses as defined in the second clause of this section;

(d) any part of a river, stream, lake or natural collection of water, or natural drainage-channel, to which the [State Government]² has applied the provisions of Part II of this Act;

(2) "water-course" means any channel which is supplied with water from a canal, but which is not maintained at the cost of [the State Government]², and all subsidiary works belonging to any such channel;

(3) "drainage-work" includes escape-channels from a canal dams, weirs, embankments, sluices, groins and other works for the protection of lands from flood or from erosion, formed or maintained by [the State Government]⁴ under the provisions of Part VII of this Act, but does not include works for the removal of sewage from towns,

1. This definition of "canal" has been extended in Pt. X, see S. 74, *infra*.

2. Subs. by the A. O. 1950 for [the Provl. Govt.] which had been subs. by the A. O. 1937 for [Govt.].

3. Subs. by the A. O. 1950 for the [Provl. Govt.] which had been subs.

by the A. O. 1937 for [L. G.]

4. Subs. by the A. O. 1950 for [the Provl. Govt.] which had been subs. by the A. O. 1937 for [the Govt.].

5. Commencement cl. rep. by Act XVI of 1874.

^{1a}(4) "vessel"^{1b} includes boats, rafts, timber and other floating bodies;

(5) "Commissioner" means a Commissioner of a Division, and includes any officer appointed under this Act to exercise all or any of the powers of a Commissioner;

(6) "Collector"^{1c} means the head revenue officer of a district, and includes ^{1d}[an] officer appointed under this Act to exercise all or any of the powers of a Collector;

¹(7) "Canal officer" means an officer appointed under this Act to exercise control or jurisdiction over a canal or any part thereof;

"Superintending Canal Officer" means an officer exercising general control over a canal or portion of a canal;

"Divisional Canal Officer" means an officer exercising control over a division of a canal;

"Sub-divisional Canal Officer" means an officer exercising control over a sub-division of a canal;

(8) "district" means a district as fixed for revenue purposes.

24. Power to appoint officer.—The [State Government]³ may, from time to time declare, by notification in the official Gazette, the officers by whom and the local limits within which, all or any of the powers or duties hereinafter conferred or imposed shall be exercised or performed.

All officers mentioned in Section 3, clause (7), shall be respectively subject to the orders of such officers as the [State Government]³ from time to time directs.

PART II

OF THE APPLICATION OF WATER FOR PUBLIC PURPOSES

25. Notification to issue when water supply is to be applied for public purposes.—Whenever it appears expedient to the [State Government]³ that water of any river or stream flowing in a natural channel, or of any lake, or other natural collection of still water, should be applied or used by [the State Government]⁴ for the purpose of any existing or projected canal or drainage-work, the [State Government]³ may, by notification⁵ in the official Gazette, declare that the said water will be so applied or used after a day to be named in the said notification, not being earlier than three months from the date thereof.

6. Powers of Canal Officer.—At any time after the day [so named]⁶, any Canal officer⁷, acting under the orders of the [State

1-a. The provisions of this cl. do not apply to State tube-wells, see S. 6 of U. P. Act XII of 1936.

1-b. Cf. definition in S. 3 (56) General Clauses Act, 1897 (Act X of 1897), U. C. A., Vol. III, p. 537.

1-c. Cf. definition in S. 3 (1.) of *ibid.*

1-d. Subs. by U. P. Act XXX of 1956.

3. Commencement cl. *rep.* by Act XVI of 1874.

1. The provisions of sub-s. (7) of S. 3 do not apply to State tube-well see S. 6 of U. P. Act XII of 1936.

2. The provisions of Ss. 4 and 5 do not apply to State tube-wells, see S. 6 of U. P. Act XII of 1936.

3. Subs. by the A. O. 1950 for [Provl,

Govt.], which had been *subs.* by the A. O. 1937 for [L. G.].

4. Subs. by the A. O. 1950 for [the Provl. Govt.] which had been *subs.* by the A. O. 1937 for [the Govt.]

5. For nots. declaring that the water of certain streams shall be applied to public purposes, see S. R. O.

6. For the purposes of the State tube-wells, read "named in a not. under S. 3 of the U. P. State Tube-Wells Act, 1936," see S. 6 and Sch. of U. P. Act XII of 1936.

7. For the purposes of the State tube-wells, read "Tube-Well Officer," see *ibid.*

Government]³ in this behalf, may enter on any land and remove any obstructions and may close any channels, and do any other thing necessary for [such application or use of the said water.]¹

Notes.—For the purposes of the State tube-wells, read “named in a not. under Section 3 of the U. P. State Tube-Wells Act, 1936,” see Section 6 and Schedule of U. P. Act XII of 1936.

For the purposes of the State tube-wells, read “Tube-Well Officer” See *ibid* and

For the purposes of the State tub-wells, read “the application or use of underground water for the purpose of a State tube-well,” see *ibid*.

Limitation.—A suit for damages on account of the construction of a tail distributory, in consequence of which damage was caused to plaintiff’s property by floods must be brought within 90 days of the date of damage⁵.

7. Notice as to claims for compensation.—As soon as is practicable after the issue of such notification, the Collector shall cause public notice to be given at convenient places, stating that the [State Government]² intends to apply or use the said water as aforesaid, and that claims for compensation in respect of the matters mentioned in Section 8 may be made before him.

³8. Damage for which compensation shall not be awarded.—No compensation shall be awarded for any damage caused by—

- ³(a) Stoppage of diminution of percolation or floods;
- (b) deterioration of climate or soil;
- (c) stoppage of navigation, or of the means of drifting timber or watering cattle;
- (d) displacement of labour.

Matters in respect of which compensation may be awarded.—But compensation may be awarded in respect of any of the following matters;

- (e) stoppage or diminution of supply of water through any natural channel to any defined artificial channel, whether above or underground, in use at the date of the said notification;
- (f) stoppage or diminution of supply of water to any work erected for purposes of profit or any channel, whether natural or artificial, in use at the date of the said notification;
- (g) stoppage or diminution of supply of water [through any natural channel which has been used for purposes of irrigation]³ within the five years next before the date of the said notification;
- (h) damage done in respect of any right to a water-course or the use of any water to which any person is entitled under the Indian Limitation Act, 1871, Part IV;
- (i) any other substantial³ damage, not falling under any of the above clauses [(a)],³ (b) [(c)]³ or (d), and caused by

1. For the purposes of the State tube-wells, read “the application or use of underground water for the purpose of a State tube-wells,” see S. 6 and Sch. of U. P. Act XII of 1936.
 2. Subs. by the A. O. 1950 for [the Provl. Govt.] which had been subs. by the A. O. 1937 for [the Govt.].
 3. For the purposes of State tube-wells, in S. 8, cls. (a) and (c) and the reference thereto in cl. (i) shall be deemed to be *omit.* in cl. (g) for the

words “through any natural channel which has been used for purposes of irrigation” the words “in any well which has been used” shall be deemed to be *subs.* and in the last paragraph for the expression “cls. (a), (b) and (c)” the expression “cl. (b)” shall be deemed to be *subs.*

4. See now the Indian Limitation Act, 1908 (Act IX of 1908).
 5. 1924 L 192.

the exercise of the powers conferred by this Act, which is capable of being ascertained and estimated at the time of awarding such compensation.

In determining the amount of such compensation, regard shall be had to the diminution in the market-value, at the time of awarding compensation, of the property in respect of which compensation is claimed; and, where such market value is not ascertainable, the amount shall be reckoned at twelve times the amount of the diminution of the annual net profits of such property caused by the exercise of the powers conferred by this Act.

No right to any such supply of water as is referred to in clause (e), (f) or (g) of this section, in respect of a work or channel not in use at the date of the notification, shall be required as against [the State Government]¹, except by grant or under the ²Indian Limitation Act, 1871, Part IV.

And no right to any of the advantages referred to in [clauses (a), (b) and (c)] of this section shall be acquired, as against [the State Government]¹, under the same Part.

Note.—For the purposes of State tube-wells, in Section 8, clauses (a) and (c) and the reference thereto in clause (i) shall be deemed to be *omit*, in clause (g) for the words “through any natural channel which has been used for purposes of irrigation” the words “in any well which has been used” shall be deemed to be *subs.* and in the last paragraph for the expression “clauses (a), (b) and (c)” the expression “clause (b)” shall be deemed to be *subs.*

Negligence-Damages.—Failure to remove silt damaging private property, due to negligence of Government, the Civil Court has jurisdiction to award damages³.

9. Limitation of claims.—No claim for compensation for any such stoppage, diminution or damage shall be made after the expiration of one year from such stoppage, diminution or damage unless the Collector is satisfied that the claimant had sufficient cause for not making the claim within such period.

10. Enquiry into claims and amount of compensation.—The Collector shall proceed to enquire into any such claim, and to determine the amount of compensation, if any, which should be given to the claimant; and Sections 9 to 12 (inclusive), 14 and 15, 18 to 23 (inclusive), 26 to 40 (inclusive), 51, 57, 58 and 59 of the Land Acquisition Act, 1870, shall apply to such enquiries:

Provided that, instead of the last clause of the said Section 26, the following shall be read: “The provisions of this section and of Section 8 of the Northern India Canal and Drainage Act, 1873, shall be read to every assessor in a language which he understands, before he gives his opinion as to the amount of compensation to be awarded.”

11. Abatement of rent on interruption of water supply.—Every tenant holding under an unexpired lease, or having a right of occupancy, who is in occupation of any land at the time when any stoppage or diminution of water-supply, in respect of which compensation is allowed under Section 8, takes place, may claim an abatement of the rent previously payable by him for the said land, on the ground that the interruption reduces the value of the holding.

1. *Subs.* by the A. O. 1930 for [the Provl. Govt.] which had been *subs.* by the A. O. 1937 for [the Govt.].

2. *See* now the Indian Limitation Act, 1908 (Act IX of 1908).

3. 1928 A 735=26 A L J 1151.

12. Enhancement of rent on restoration of water-supply.—

If a water-supply increasing the value of such holding is afterwards restored to the said land, the rent of the tenant may be enhanced, in respect of the increased value of such land due to the restored water-supply, to an amount not exceeding that at which it stood immediately before the abatement.

Such enhancement shall be on account only of the restored water-supply, and shall not affect the liability of the tenant to enhancement of rent on any other grounds.

13. Compensation when due.—All sums of money payable for compensation under this Part shall become due three months after the claim for such compensation is made in respect of the stoppage, diminution or damage complained of,

Interest.—and simple interest at the rate of six per cent. per annum shall be allowed on any such sum remaining unpaid after the said three months, except where the non-payment of such sum is caused by the wilful neglect or refusal of the claimant to receive the same.

PART III

Of the Construction and Maintenance of Works

14. Power to enter and survey, etc.—Any Cannal officer² or other person acting under the general or special order of a Canal officer,²

may enter upon any lands adjacent to any canal, or through which any canal is proposed to be made, and undertake surveys or levels thereon ;

and dig and bore into the sub-soil ;

and make and set up suitable land-marks, level-marks and water-gauges,

and do all other acts necessary for the proper prosecution of any enquiry relating to any existing or projected canal under the charge of the said Canal Officer,²

Power to clear land.—and, where otherwise such enquiry cannot be completed, such officer or other person may cut down and clear away any part of any standing crop, fence or jungle ;

Power to inspect and regulate water-supply.—and may also enter upon any land, building or water-course on account of which any water-rate is chargeable, for the purpose of inspecting or regulating the use of the water supplied, or of measuring the lands irrigated thereby or chargeable with a water-rate, and of doing all things necessary for the proper regulation and management of such canal :

Notice of intended entry into houses.—Provided that, if such Canal Officer¹ or person proposes to enter into any building or enclosed court or garden attached to a dwelling-house not supplied with water flowing from any canal, he shall previously give the occupier of such building, court or garden at least seven days' notice in writing of his intention to do so.

1. As to the application of S. 14 in the case of proposed drainage-works, *see* S. 58, *infra*.

2. For the purposes of State tube-wells,

read "Tube-well Officer" for "Canal Officer" and "Divisional Officer" for "Divisional Canal Officer", *see* S. 6 of U. P. Act, XII of 1936.

Compensation for damage caused by entry.—In every case of entry under this section, the Canal Officer¹ shall, at the time of such entry, tender compensation for any damage which may be occasioned by any proceeding under this section; and, in case of dispute as to the sufficiency of the amount so tendered, he shall forthwith refer the same for decision by the Collector, and such decision shall be final.

15. Power to enter for repairs and to prevent accidents.—In case of any accident happening or being apprehended to a canal, any Divisional Canal-officer¹ or any person acting under his general or special orders in this behalf may enter upon any lands adjacent to such canal, and may execute all works which may be necessary for the purpose of repairing or preventing such accident.

Compensation for damage to land.—In every such case such Canal Officer² or person shall tender compensation to the proprietors or occupiers of the said lands for all damage done to the same. If such tender is not accepted, the Canal Officer² shall refer the matter to the Collector, who shall proceed to award compensation for the damage as though the [State Government]³ had directed the occupation of the lands under Section 43 of the Land Acquisition Act, 1870.⁴

Scope.—The words “may execute all works” do not depend upon the preceding words and entering upon the land adjacent is a necessary preliminary for the execution of any work on a canal⁵. This section prescribes a special procedure: it is the officer who is to tender compensation to the proprietors and if the proprietor does not accept it, it is the officer who has to refer the matter to the Collector. If the Revenue Officer removes earth from the land of a person, but does not offer any compensation, and consequently there has been no reference, a suit for damages against the Government is not barred⁶.

Limitation.—A suit for damages caused by preventive action taken under Section 15 of the Act is governed by Article 2 of the Limitation Act and the starting point is the date on which the damage occurred, and not the date of the construction of the work which caused the damage⁷.

16. Application by persons desiring to use the canal water.—Any persons desiring to use the water of any canal may apply in writing to the Divisional or Sub-divisional Canal Officer² of the division or sub-division of the canal from which the water-course is to be supplied, requesting such officer to construct or improve a water-course at the cost of the applicants.

Contents of application.—The application shall state the works to be undertaken, their approximate estimated cost, or the amount which the applicants are willing to pay for the same, or whether they engage to pay the actual cost as settled by the Divisional Canal-officer,² and how the payment is to be made.

1. For the purposes of State tube-wells, read “Tube-well officer” for “Canal Officer” and “Divisional Officer” for “Divisional Canal Officer,” see S. 6 of U. P. Act XII of 1936.
2. For the purposes of State tube-wells, for the expressions “Canal Officer,” “Superintending Canal Officer,” “Divisional Canal Officer” and “Sub-Divisional Canal Officer,” read “Tube-well Officer,” “Superintending Engineer,” “Divisional

Officer” and “Sub-Divisional Officer,” respectively—see S. 6 of U. P. Act XII of 1936.

3. Subs. by the A. O. 1950 for [Prov. Govt.] which had been sub. by the A. O. 1937 for [L. G.].
4. See now S. 35 of the Land Acquisition Act, 1894 (Act I of 1894).
5. *Punjab Cotton Press Co. v. Secretary of State for India*, 4 L. 428.
6. *Amar Kuar v. Secretary of State*, 1939 L. 583.
7. 1924 L. 169 = 79 I C 208.

Liability of applicants for cost of works.—When the assent of the Superintending Canal-officer¹ is given to such application, all the applicants shall, after the application has been duly attested before the Collector, be jointly and severally liable for the cost of such works to the extent mentioned therein.

Recovery of amount due.—Any amount becoming due under the terms of such application, and not paid to the Divisional Canal-officer¹ or the person authorized by him to receive the same, on or before the date on which it becomes due, shall, on the demand of such officer, be recoverable by the Collector as if it were an arrear of land-revenue.

17. Government to provide means of crossing canals.—

There shall be provided, at the cost of [the State Government]², suitable means of crossing canals constructed or maintained at the cost of [the State Government]², at such places as the [State Government]³ thinks necessary for the reasonable convenience of the inhabitants of the adjacent lands.

On receiving a statement in writing, signed by not less than five of the owners of such lands, to the effect that suitable crossings have not been provided on any canal, the Collector shall cause enquiry to be made into the circumstances of the case, and, if he thinks that the statement is established, he shall report his opinion thereon for the consideration of the [State Government]³ and the [State Government]³ shall cause such measures in reference thereto to be taken as it thinks proper.

18. Persons using water-course to construct works for passing water across roads, etc.—The Divisional Canal-officer¹ may issue an order to the persons using any water-course to construct suitable bridges, culverts or other works for the passage of the water of such water-course across any public road, canal or drainage-channel in use before the said water-course was made, or to repair any such works.

If they fail, Canal officer may construct.—Such order shall specify a reasonable period within which such construction or repairs shall be completed ;

and if, after the receipt of such order, the persons to whom it is addressed do not, within the said period, construct or repair such works to the satisfaction of the said Canal-officer,¹ he may, with the previous approval of the Superintending Canal-officer¹, himself construct or repair the same ;

And recover cost.—and, if the said persons do not, when so required, pay the cost of such construction or repairs as declared by the Divisional Canal-officer¹, the amount shall, on the demand of the Divisional Canal-officer¹, be recoverable from them by the Collector as if it were an arrear of land-revenue.

For the purposes of State tube-wells, for the expressions, "Canal Officer," "Superintending Canal Officer," "Divisional Canal-officer" and "Sub-Divisional Canal-officer" read "Tube-well Officer" "Superintending Engineer," "Divisional Officer" and "Sub-Divisional Officer," respective

ly—see S. 6 of U. P. Act XII of 1936.

2^a Subs. by the A. O. 1950 for [the [Provl. Govt.] which had been *sub.* by the A. O. 1937 for [Govt.].

3^a Subs. by the A. O. 1950 for [Provl. Govt.] which had been *subs.* by the A. O. 1937 for [L. G.].

19. Adjustment of claims between persons jointly using water-course.—If any person, jointly responsible with others for the construction or maintenance of a water-course, or jointly making use of a water-course with others, neglects or refuses to pay his share of the cost of such construction or maintenance, or to execute his share of any work necessary for such construction or maintenance, the Divisional or Sub-divisional Canal-officer,¹ on receiving an application in writing from any person injured by such neglect or refusal, shall serve notice on all the parties concerned that, on the expiration of a fortnight from the service, he will investigate case; and shall, on the expiration of that period, investigate the case accordingly, and make such order thereon as to him seems fit.

Such order shall be appealable to the Commissioner, whose order thereon shall be final.

Recovery of amount found due.—Any sum directed by such order to be paid within a specified period may, if not paid within such period, and if the order remains in force, be recovered by the Collector, from the person directed to pay the same, as if it were an arrear of land-revenue.

20. Supply of water through intervening water-course.—Whenever application is made to a Divisional Canal-officer¹ for a supply of water from a canal, and it appears to him expedient that such supply should be given and that it should be conveyed through some existing water-course, he shall give notice to the persons responsible for the maintenance of such water-course to show cause, on a day not less than fourteen days from the date of such notice, why the said supply should not be so conveyed; and, after making enquiry on such day, the Divisional Canal-officer¹ shall determine whether and on what conditions the said supply shall be conveyed through such water-course.

When such officer determines that a supply of canal-water may be conveyed through any water-course as aforesaid, his decision shall, when confirmed or modified by the Superintending Canal-officer¹, be binding on the applicant and also on the persons responsible for the maintenance of the said water-course.

Such applicant shall not be entitled to use such water-course until he has paid the expense of any alteration of such water-course necessary in order to his being supplied through it, and also such share of the first cost of such water-course as the Divisional or Superintending Canal-officer¹ may determine.

Such applicant shall also be liable for his share of the cost of maintenance of such water-course so long as he uses it.

Presumption.—Where a water course was utilised for the supply of water for 30 years, it must be presumed that either there was an agreement between the parties or action had been taken under Section 20 or 21.²

21. Application for construction of new water-course.—Any person desiring the construction of a new water-course may apply in writing to the Divisional Canal-officer¹, stating—

(1) that he has endeavoured unsuccessfully to acquire, from the owners of the land through which he desires such water-

For the purposes of State tube-wells, for the expression, "Canal Officer," "Superintending Canal Officer," "Divisional Canal Officer" and "Sub-Divisional Canal Officer," read "Tube-well Officer", "Superin-

tending Engineer", "Divisional Officer" and "Sub-Divisional Officer," respectively, see S. 6 of U. P. Act XII of 1936.

2. 1929 A 271=1929 A L J 463 L A 193.

course to pass, a right to occupy so much of the land as will be needed for such water-course ;

(2) that he desires the said Canal-officer,¹ in his behalf and at his cost, to do all things necessary for acquiring such right ;

(3) that he is able to defray all costs involved in acquiring such right and constructing such water-course.

22. Procedure of Canal-officer thereupon.—If the Divisional Canal-officer¹ considers—

(1) that the construction of such water-course is expedient, and

(2) that the statements in the application are true,

he shall call upon the applicant to make such deposit as the Divisional Canal-officer¹ considers necessary to defray the cost of the preliminary proceedings and the amount of any compensation which he considers likely to become due under Section 28 ;

and, upon such deposit being made, he shall cause inquiry to be made into the most suitable alignment for the said water-course, and shall mark out the land which, in his opinion, it will be necessary to occupy for the construction thereof, and shall forthwith publish a notice in every village through which the water-course is proposed to be taken, that so much of such land as belongs to such village has been so marked out, and shall send a copy of such notice to the Collector of every district in which any part of such land is situate.

23. Application for transfer of existing water-course.—

Any person desiring that an existing water-course should be transferred from its present owner to himself may apply in writing to the Divisional Canal-officer,¹ stating—

(1) that he has endeavoured unsuccessfully to procure such transfer from the owner of such water-course ;

(2) that he desires the said Canal-officer,¹ in his behalf and at his cost, to do all things necessary for procuring such transfer ;

(3) that he is able to defray the cost of such transfer.

If the Divisional Canal-officer¹ considers—

(a) *Procedure thereon.*—that the said transfer is necessary for the better management of the irrigation from such water-course, and

(b) that the statements in the application are true,

he shall call upon the applicant to make such deposit as the Divisional Canal-officer¹ considers necessary to defray the cost of the preliminary proceedings, and the amount of any compensation that may become due under the provisions of Section 28 in respect of such transfer ;

and upon such deposit being made, he shall publish a notice of the application in every village, and shall send a copy of the notice to the Collector of every district through which such water-course passes.

1. For the purposes of State tube-wells, for the expressions "Canal Officer" "Superintending Canal Officer" and "Divisional Canal Officer,"

read "Tube-well Officer," "Superintending Engineer" and "Divisional Officer" respectively, see S. 6 of U. P. Act XII of 1936.

24. Objections to construction or transfer applied for.—Within thirty days from the publication of a notice under Section 22 or Section 23, as the case may be, any person interested in the land or water-course to which the notice refers may apply to the Collector by petition, stating his objection to the construction or transfer for which application has been made.

The Collector may either reject the petition or may proceed to inquire into the validity of the objection, giving previous notice to the Divisional Canal-officer¹ of the place and time at which such inquiry will be held.

The Collector shall record in writing all orders passed by him under this section, and the grounds thereof.

25. When applicant may be placed in occupation.—If no such objection is made, or (where such objection is made) if the Collector over rules it, he shall give notice to the Divisional Canal-officer¹ to that effect, and shall proceed forthwith to place the said applicant in occupation of the land marked out or of the water-course to be transferred, as the case may be.

26. Procedure when objection is held valid.—If the Collector considers any objection made as aforesaid to be valid, he shall inform the Divisional Canal-officer¹ accordingly; and, if such officer sees fit, he may, in the case of an application under Section 21, alter the boundaries of the land so marked out, and may give fresh notice under Section 22; and the procedure hereinbefore provided shall be applicable to such notice, and the Collector shall thereupon proceed as before provided.

27. Procedure when Canal-officer disagrees with Collector.—If the Canal-officer¹ disagrees with the Collector, the matter shall be referred for decision to the Commissioner.

Such decision shall be final, and the Collector, if he is so directed by such decision, shall, subject to the provisions of Section 28, cause the said applicant to be placed in occupation of the land so marked out or of the water-course to be transferred, as the case may be.

28. Expenses to be paid by applicant before receiving occupation.—No such applicant shall be placed in occupation of such land or water-course until he has paid to the person named by the Collector such amount as the Collector determines to be due as compensation for the land or water-course so occupied or transferred, and for any damage caused by the marking out or occupation of such land, together with all expenses incidental to such occupation or transfer.

Procedure in fixing compensation.—In determining the compensation to be made under this section, the Collector shall proceed under the provisions of the Land Acquisition Act, 1870²; but he may, if the person to be compensated so desires award such compensation in the form of a rent-charge payable in respect of the land or water-course occupied or transferred.

Recovery of compensation and expenses.—If such compensation and expenses are not paid when demanded by the person entitled to receive

1. For the purposes of State tube-wells, read "Divisional Officer" for "Canal Officer" in S. 27, and for "Divisional Canal Officer", at other

places, see S. 6 and Sch. of U. P. Act XII of 1936.

2. See now the Land Acquisition Act, 1894 (Act I of 1894).

the same, the amount may be recovered by the Collector as if it were an arrear of land-revenue, and shall, when recovered, be paid by him to the person entitled to receive the same.

29. Conditions binding on applicant placed in occupation.—When any such applicant is placed in occupation of land or of a water-course as aforesaid, the following rules and conditions shall be binding on him and his representative in interest ;

First.—All works necessary for the passage across such water-course, of water-courses existing previous to its construction and of the drainage intercepted by it, and for affording proper communications across it for the convenience of the neighbouring lands, shall be constructed by the applicant, and be maintained by him or his representative in interest to the satisfaction of the Divisional Canal-officer.¹

Second.—Land occupied for a water-course under the provisions of Section 22 shall be used only for the purpose of such water-course.

Third.—The proposed water-course shall be completed to the satisfaction of the Divisional Canal-officer¹ within one year after the applicant is placed in occupation of the land.

In cases in which land is occupied or a water-course is transferred on the terms of a rent charge.

Fourth.—The applicant or his representative in interest shall, so long as he occupies such land or water-course, pay rent for the same at such rate and on such days as are determined by the Collector when the applicant is placed in occupation.

Fifth.—If the right to occupy the land ceases owing to a breach of any of these rules, the liability to pay the said rent shall continue until the applicant or his representative in interest has restored the land to its original condition, or until he has paid, by way of compensation for any injury done to the said land, such amount and to such persons as the Collector determines.

Sixth.—The Collector may, on the application of the person entitled to receive such rent or compensation, determine the amount of rent due or assess the amount of such compensation ; and, if any such rent or compensation be not paid by the applicant or his representative in interest, the Collector may recover the amount, with interest thereon at the rate of six per cent per annum from the date on which it became due, as if it were an arrear of land-revenue, and shall pay the same, when recovered, to the person to whom it is due.

If any of the rules and conditions prescribed by this section are not complied with,

or if any water-course constructed or transferred under this Act is disused for three years continuously,

the right of the applicant, or of his representative in interest, to occupy such land or water-course shall cease absolutely,

30. Procedure applicable to occupation for extensions and alterations.—The procedure hereinbefore provided for the occupation of land for the construction of a water-course shall be applicable to the occupation of land for any extension or alteration of a water-course, and for the deposit of soil from water-course clearances.

1. For the purposes of State tube-wells, read "Divisional Officer" for "Divi-

sional Canal Officer", see S. 6, of U. P. Act XII of 1936.

PART IV

Of the Supply of Water

31. In absence of written contract, water-supply to be subject to rules.—In the absence of a written contract, or so far as any such contract does not extend, every supply of canal-water shall be deemed to be given at the rates and subject to the conditions prescribed by the rules to be made by the [State Government]¹ in respect thereof.

Scope.—The use of water from a tank for purposes of building a pucca house though not authorised under R. 10 framed under Section 31 of the Act is not an offence under the Act.⁶

32. Conditions as to.—Such contracts and rules must be consistent with the following conditions :

(a) *Power to stop water-supply.*—The Divisional Canal Officer² may not stop the supply of water to any water-course, or to any person, except in the following cases :

(1) whenever and so long as it is necessary to stop such supply for the purpose of executing any work ordered by competent authority,³[and with the previous sanction of the (State Government)¹ ;]

(2) whenever and so long as any water-course is not maintained in such proper customary repair as to prevent the wasteful escape of water therefrom ;

(3) within periods fixed from time to time by the Divisional Canal-Officer :²

(b) *Claims to compensation in case of failure or stoppage of supply.*—No claim shall be made against [the State Government]⁴ for compensation in respect of loss caused by the failure or stoppage of the water in a canal, by reason of any cause beyond the control of [the State Government]⁴, or of any repairs, alterations or additions to the canal, or of any measures taken for regulating the proper flow of water therein, or for maintaining the established course of irrigation which the Divisional Canal Officer² considers necessary ; but the person suffering such loss may claim such remission of the ordinary charges payable for the use of the water as is authorized by the [State Government]¹ :

(c) *Claims on account of interruption from other causes.*—If the supply of water to any land irrigated from a canal be interrupted otherwise than in the manner described in the last preceding clause, the occupier or owner of such land may present a petition for compensation to the Collector for any loss arising from such interruption, and the Collector may award to the petitioner reasonable compensation for such loss :

⁵(d) *Duration of supply.*—When the water of a canal is supplied for the irrigation of a single crop, the permission to use such water shall be held to continue only until that crop comes to maturity, and to apply only to that crop ; but if it be supplied for irrigating two or more crops to be raised on the same land within the year, such permission shall be

1. Subs. by the A. O. 1950 for [Provl. Govt.] which had been subs. by the A. O. 1937 for [L. G.].

2. For the purposes of State tube-wells, read "Divisional Officer" for "Divisional Canal Officer", see S. 6 of U. P. Act XII of 1936.

3. For the purposes of State tube-wells, the words "and with the previous sanction of the Provincial Govt.,"

shall be deemed to be *omit.* See S. 6 and Sch. of U. P. Act XII of 1936.

4. Subs. by the A. O. 1950 for [the Provl. Govt.] which had been subs. by the A. O. 1937 for [Govt.].

5. For the purposes of State Tube-wells, cl. (d) shall be deemed to be *omit.*, see S. 6 and Sch. of U. P. Act XII of 1936.

6. 1921 L 187=64 I C 497.

held to continue for one year from the commencement of the irrigation, and to apply to such crops only as are matured within that year :

(e) *Sale or sub-letting of right to use canal-water.*—Unless with the permission of the Superintending Canal-Officer¹, no person entitled to use the water of any canal, or any work, building or land appertaining to any canal, shall sell or sub-let or otherwise transfer his right to such use :

Provided that the former part of this clause shall not apply to the use by a cultivating tenant of water supplied by the owner of a water-course for the irrigation of the land held by such tenant :

Transfer with land of contracts for water.—But all contracts made between [the State Government]¹ and the owner or occupier of any immovable property, as to the supply of canal-water to such property, shall be transferable therewith, and shall be presumed to have been so transferred whenever a transfer of such property takes place :

(f) *No right acquired by user.*—No right to the use of the water of a canal shall be, or be deemed to have been, acquired under the Indian Limitation Act, 1871,² Part IV ; nor shall [the State Government]¹ be bound to supply any person with water except in accordance with the terms of a contract in writing.

Scope.—A transfer of a greater share of canal water than the area of land transferred warranted is not invalid, although the right to such water is attached to other land belonging to the vendor⁴. Section 32 (e) does not make a contract to transfer right to receive canal water void from its inception. The only condition is that the approval of superintending canal officer must be obtained by the alienor to complete a valid alienation of the right to irrigate the property sold with canal water. Such approval can be obtained even subsequent to the alienation⁵.

PART V

Of Water-rates

33. Liability when person using unauthorizedly cannot be identified.—If water supplied through a water-course be used in an unauthorized manner, and if the person by whose act or neglect such use has occurred cannot be identified,

the person on whose land such water has flowed, if such land has derived benefit therefrom,

or if such person cannot be identified, or if such land has not derived benefit therefrom, all the persons chargeable in respect of the water supplied through such water-course,

shall be liable, or jointly liable, as the case may be, to the charges made for such use.

34. Liability when water runs to waste.—If water supplied through a water-course be suffered to run to waste, and if, after enquiry by the Divisional Canal-Officer,³ the person through whose act or neglect such water was suffered to run to waste cannot be discovered, all the persons chargeable in respect of the water supplied through such water-course shall be jointly liable for the charges made in respect of the water so wasted.

1. *Subs.* by the A. O. 1950 for [the Provl. Govt.] which had been *subs.* by the A. O. 1937 for (Govt.).

2. See now the Indian Limitation Act, 1908.

3. For the purposes of State tube-wells, read "Superintending Engineer" for

"Superintending Canal Officer", and "Divisional Officer" for "Divisional Canal Officer", see S. 6 of U. P. Act XII of 1936.

4. *Mst. Ishar Kuar v. Harnam*, 1950 PEPSU 47.

5. *Ibid.*

35. Charges recoverable in addition to penalties.—All charges for the unauthorized use for waste of water may be recovered in addition to any penalties incurred on account of such use or waste.

Decision of questions under Sections 33 and 34.—All questions under Section 33 or Section 34 shall be decided by the Divisional Canal Officer,¹ subject to an appeal to the head revenue-officer of the district, or such other appeal as may be provided under Section 75.

Scope.—This section has no application unless the plaintiff's case as stated in the plaint falls within the purview of Section 33.⁶

36. Charge on occupier for water how determined.—The rates to be charged for canal-water supplied for purposes of irrigation to the occupiers of land shall be determined by the rules² to be made by the [State Government]³ and such occupiers as accept the water shall pay for it accordingly.

"Occupier's rate".—A rate so charged shall be called the "occupier's rate."

[The rules hereinbefore referred to may prescribe and determine what persons or classes of persons are to be deemed to be occupiers for the purposes of this section, and may also determine the several liabilities, in respect of the payment of the occupier's rate, of tenants and of persons to whom tenants may have sublet their lands, or of proprietors and of persons to whom proprietors may have let the lands held by them in cultivating occupancy.]⁴

Lambardar's Liability.—Under the Act proceedings cannot be taken against the lambardar — they have to be recovered from the occupiers.⁷

37. "Owner's rate".—In addition to the occupier's rate, a rate to be called the "owner's rate" may be imposed, according to rules⁵ to be made by the [State Government]³, on the owners of canal-irrigated lands, in respect of the benefit which they derive from such irrigation.

38. Amount of owner's rate.—The owner's rate shall not exceed the sum which, under the rules for the time being in force for the assessment of land-revenue, might be assessed on such land, on account of the increase in the annual value or produce thereof caused by the canal-irrigation. And, for the purpose of this section only, land which is permanently settled or held free of revenue shall be considered as though it were temporarily settled and liable to payment of revenue.

39. Owner's rate when not chargeable.—No owner's rate shall be chargeable either on the owner or occupier of land temporarily assessed to pay land-revenue at irrigation rates during the currency of such assessment.

1. For the purposes of State tube-wells, read "Divisional Officer" for "Divisional Canal Officer", see S. 6 of U. P. Act XII of 1936.

2. For power to make rules, see S. 75, *infra*.

3. Subs. by the A. O. 1950 for [Prov. Govt.] which had been subs. by the A. O. 1937 for [L. G.].

4. This para. was *add.* to S. 36 by Act XVI of 1899, S. 2.

5. For rules for assessing owner's rates, see *nots.* no. 3823/L. d. Dec. 13, 1898, no. 1802/I. d. June 13, 1899, no. 3552/I.M./17'B=83W, d. Aug.

21, 1917, no. 843 and 845/I.M./17 B-64 W. d. May 16, 1930, no. 11132—I.W./17B—64W, d. Sept 2, 1936, and no. N. T. 552-I.W./17B—64 W., d. Sept. 28, 1936. in *Gaz.* 1898, Pt. I, p. 1092, *ibid.*, 1899, Pt. I, p. 403, *ibid.*, 1917, Pt. I, p. 1447, *ibid.*, 1930, Pt. I, p. 479 and *ibid.*, 1936, Pt. I, pp. 1008 and 1151, respectively.

6. *Punjab Province v. Municipal Committee, Rohtak*, 1947 L 236.

7. *Tulshi Prasad v. Mathura Prasad*, 1931 A 449=1931 A L J 528.

40. When occupier is to pay both owner's rate and occupier's rate.—If such land is occupied by the owner,

or if it is occupied by a tenant whose rent is not liable to enhancement on the ground that the value of the produce of the land or the productive powers of the land has or have been increased by irrigation, such owners or tenant shall pay the owner's rate as well as the occupier's rate.

41. Power to make rules for apportioning owner's rate.—

In the case of a tenant with a right of occupancy, the [State Government]¹ shall have power to make rules for dividing the owner's rate between such tenant and his landlord, proportionately to the extent of the beneficial interest of each in the land.

42. When owner is to pay owner's rate.—If the owner of the land is not the occupier, but has power to enhance the rent of the occupier on the ground that the value of the produce or the productive powers of the land has or have been increased by irrigation ;

or if, when the amount of a rent was fixed, the land was irrigated from the canal,

the owner shall pay the owner's rate.

43. Effect of introduction of canal irrigation on landlord's right to enhance—If a revision of settlement is a ground for entertaining a suit for the enhancement of rent the introduction of canal irrigation into any land shall have the same effect on the landlord's right to re-enhance the rent of a tenant with a right of occupancy of such land, as if a revision of settlement had taken place, under which the revenue payable in respect of such land had been increased.

44. Water-rate by whom payable when charged on land held by several owners.—Where a water-rate is charged on land held by several joint owners, it shall be payable by the manager or other person who receives the rents or profits of such land, and may be deducted by him from such rents or profits before division, or may be recovered by him from the persons liable to such rate in the manner customary in the recovery of other charges on such rents or profits.

Recovery of Charges

[45. Certified dues to be recovered as land revenue.—Subject to the provisions of Sections 46 and 47 any sum lawfully due under this Part and certified by the Divisional Canal-officer to be so due which remains unpaid after the day on which it becomes due shall be recovered by the Collector from the person liable for the same as if it were an arrear of land revenue].

Civil Court—Jurisdiction.—Under this section the canal dues are realisable as arrears of land revenue, and Section 158 of the Punjab Land Revenue Act ousts the jurisdiction of the Civil Courts to entertain any claim in respect of any amount which is realisable as land revenue⁴.

46. Power to contract for collection of canal dues.—The Divisional Canal-officer³ or the Collector may enter into an agreement with any person for the collection and payment to [State Government]⁶ by such person of any sum payable under this Act by a third party.

1. Subs. by the A. O. 1950 for [Provl. Govt.] which had been subs. by the A. O. 1937 for [L. G.].

2. S. 15 was subs. by S. 2 of U. P. Act VI of 1932.

3. For the purposes of State tube-wells read "Divisional Officer" for "Divi-

sional Canal Officer", see S. 6 of U. P. Act XII of 1936.

4. *Punjab Province v. Municipal Committee, Rohtak* 1947 L 236.

5. Subs. by the A. O. 1950 for [the Provl. Govt.] which had been subs. by the A. O. 1937 for [the Govt.].

When such agreement has been made, such person may recover such sum by suit as though it were a debt due to him, or an arrear of rent due to him on account of the land, work or building in respect of which such sum is payable, or for or in which the canal water shall have been supplied or used.

If such person makes default in the payment of any sum collected by him under this section, such sum may be recovered from him by the Collector under Section 45; and, if such sum or any part of it be still due by the said third party, the sum or part so due may be recovered in like manner by the Collector from such third party.

‘[47. Grant of permission to lambardars to collect canal dues.]—(1) If the lambardar or person under engagement to pay the land revenue of any estate desires to collect and pay to [the State Government]³ any sums payable under this Act by a third party in respect of any land or water in such an estate he shall apply to the Collector and the Collector may grant or refuse his application.

(2) Where such application has been allowed such sums shall be recoverable from the lambardar or persons under engagement to pay the land revenue of any estate by the Collector as if they were arrears of land revenue.

(3) The lambardar or person under engagement to pay the land revenue of any estate whose application to make collections under this section has been allowed by the Collector may for the purpose of collecting such sums from the subordinate zamindars, tenants or sub-tenants exercise the powers, and shall be subject to the rules laid down in the law for the time being in force in respect of the collection by him of the rents of land or of the shares of land revenue.

(4) The [State Government]¹ shall provide—

- (a) for remunerating persons collecting sums under this section; or
- (b) for indemnifying them against expenses properly incurred by them in such collection; or
- (c) for both purposes].

48. Fines excluded from Sections 45 to 47.—Nothing in Section 45, 46 or 47 applies to fines.

PART VI²

OF CANAL-NAVIGATION

49. Detainer of vessels violating rules.—Any vessel entering or navigating any canal contrary to the rules made in that behalf by the [State Government]¹, or so as to cause danger to the canal or the other vessels therein, may be removed or detained, or both removed and detained, by the Divisional Canal-officer, or by any other person duly authorized in this behalf.

Liability of owners of vessels causing damage.—The owner of any vessel causing damage to a canal, or removed or detained under this section, shall be liable to pay to [the State Government]³ such sum as the Divisional Canal-officer, with the approval of the Superintending Canal-

4. S. 47 was *subs.* by S. 3 of U. P. Act VI of 1932.

1. *Subs.* by the A. O. 150 for [Prov. Govt.] which had been *subs.* by the A. O. 1937 for [L. G.].

2. The provisions of this Pt. do not

apply to State tube-wells. *see* S. 6 of U. P. Act XII of 1936.

3. *Subs.* by the A. O. 1950 for [the Prov. Govt.] which had been *subs.* by the A. O. 1937 for [the Govt.].

officer, determines to be necessary to defray the expenses of repairing such damage, or of such removal or detention, as the case may be.

50. Recovery of fines for offences in navigating canals.—Any fine imposed under this Act upon the owner of any vessel or the servant or agent of such owner or other person in charge of any vessel, for any offence in respect of the navigation of such vessel, may be recovered either in the manner prescribed by the Code of Criminal Procedure¹, or, if the Magistrate imposing the fine so directs, as though it were a charge due in respect of such vessel.

51. Power to seize and detain vessel on failure to pay charges.—If any charge due under the provisions of this Part in respect of any vessel is not paid on demand to the person authorized to collect the same, the Divisional Canal-officer may seize and detain such vessel and the furniture thereof, until the charge so due, together with all expenses and additional charges arising from such seizure and detention, is paid in full.

52. Power to seize cargo or goods, if charges due thereon are not paid.—If any charge due under the provisions of this Part in respect of any cargo or goods carried in a Government vessel on a canal, or stored on or in lands or warehouses occupied for the purposes of a canal, is not paid on demand to the person authorized to collect the same, the Divisional Canal-officer may seize such cargo or goods and detain them until the charge so due, together with all expenses and additional charges arising from such seizure and detention, is paid in full.

53. Procedure for recovery of such charges after seizure.—Within a reasonable time after any seizure under Section 51 or Section 52, the said Canal-officer shall give notice to the owner or person in charge of the property seized that it, or such portion of it as may be necessary, will, on a day to be named in the notice, but not sooner than fifteen days from the date of the notice, be sold in satisfaction of the claim on account of which such property was seized, unless the claim be discharged before the day so named.

And, if such claim be not so discharged, the said Canal-officer may, on such day, sell the property seized or such part thereof as may be necessary to yield the amount due, together with the expenses of such seizure and sale :

Provided that no greater part of the furniture of any vessel or of any cargo or goods shall be so sold than shall, as nearly as may be, suffice to cover the amount due in respect of such vessel, cargo or goods.

The residue of such furniture, cargo or goods, and of the proceeds of the sale, shall be made over to the owner or person in charge of the property seized.

54. Procedure in respect of vessels abandoned and goods unclaimed.—If any vessel be found abandoned in a canal, or any cargo or goods carried in a Government vessel on a canal, or stored on or in lands or warehouses occupied for the purposes of a canal be left unclaimed for a period of two months, the Divisional Canal-officer may take possession of the same.

Disposal of proceeds of sale.—The officer so taking possession may publish a notice that, if such vessel and its contents, or such cargo or goods, are not claimed previously to a day to be named in the notice,

1. See now the Code of Criminal Procedure, 1898 (Act V of 1893).

not sooner than thirty days from the date of such notice, he will sell the same; and, if such vessel, contents, cargo or goods be not so claimed, he may, at any time after the day named in the notice, proceed to sell the same.

The said vessel and its contents, and the said cargo or goods, if unsold, or, if a sale has taken place, the proceeds of the sale, after paying all tolls, charges and expenses incurred by the Divisional Canal-officer on account of the taking possession and sale, shall be made over to the owner of the same, when his ownership is established to the satisfaction of the Divisional Canal-officer.

If the Divisional Canal-officer is doubtful to whom such property or proceeds should be made over, he may direct the property to be sold as aforesaid, and the proceeds to be paid into the district treasury, there to be held until the right thereto be decided by a Court of competent jurisdiction.

PART VII

Of Drainage

55. Power to prohibit obstructions or order their removal.—Whenever it appears to the [State Government]¹ that injury to any land or the public health or public convenience has arisen or may arise from the obstruction of any river, stream or drainage-channel, such Government may, by notification² published in the official Gazette, prohibit, within limits to be defined in such notification, the formation of any obstruction, or may, within such limits, order the removal or other modification of such obstruction.

Thereupon so much of the said river, stream or drainage-channel as it comprised within such limits shall be held to be a drainage-work as defined in Section 3.

56. Power to remove obstructions after prohibition.—The Divisional Canal-officer³, or other person authorized by the [State Government]¹ in that behalf, may, after such publication, issue an order to the person causing or having control over any such obstruction to remove or modify the same within a time to be fixed in the order.

If, within the time so fixed, such person does not comply with the order, the said Canal-officer³ may himself remove or modify the obstruction; and, if the person to whom the order was issued does not, when called upon, pay the expenses involved in such removal or modification, such expenses shall be recoverable by the Collector from him or his representative in interest as an arrear of land revenue.

57. Preparation of schemes for works of improvement.—Whenever it appears to the [State Government]¹ that any drainage-works are necessary for the improvement of any lands, or for the proper cultivation or irrigation thereof,

or that protection from floods or other accumulations of water, or from erosion by a river, is required for any lands,

1. Subs. by the A. O. 1950 for [Prov. Govt.] which had been subs. by the A. O. 1937 for [L. G.].

2. For nots. prohibiting and removing obstructions in certain streams, see S. R. O.

3. For the purposes of State tube-wells, read "Tube-well Officer" for "Canal Officer," and "Divisional Officer" for "Divisional Canal Officer," see S. 6 of U. P. Act XII of 1936.

the [State Government]¹ may cause a scheme for such drainage-works to be drawn up and published, together with an estimate of its cost and a statement of the proportion of such cost which [the State Government]² proposes to defray, and a schedule of the lands which it is proposed to make chargeable in respect of the scheme.

58. Powers of persons employed on such schemes.—The persons authorized by the [State Government]¹ to draw up such scheme may exercise all or any of the powers conferred on Canal-officers³ by Section 14.

59. Rate on lands benefited by works.—An annual rate, in respect of such scheme, may be charged, according to rules to be made by the [State Government]¹, on the owners of all lands which shall, in the manner prescribed by such rules, be determined to be so chargeable.

Such rate shall be fixed, as nearly as possible, so as not to exceed either of the following limits :

(1) six per cent. per annum on the first cost of the said works, adding thereto the estimated yearly cost of the maintenance and supervision of the same, and deducting therefrom the estimated income, if any, derived from the works, excluding the said rate :

(2) in the case of agricultural land, the sum which, under the rules then in force for the assessment of land-revenue, might be assessed on such land on account of the increase of the annual value or produce thereof caused by the drainage-work.

Such rate may be varied from time to time, within such maximum, by the [State Government]¹.

So far as any defect to be remedied is due to any canal, water-course, road or other work or obstruction, constructed or caused by the [State Government]¹ or by any person, a proportionate share of the cost of the drainage-works required for the remedy of the said defect shall be borne by such Government or such person, as the case may be.

60. Recovery of rate.—Any such drainage rate may be collected and recovered in manner provided by Sections 45, 46 and 47 for the collection and recovery of water-rates.

61. Disposal of claims to compensation.—Whenever, in pursuance of a notification made under Section 55, any obstruction is removed or modified,

or whenever any drainage-work is carried out under Section 57,

all claims for compensation on account of any loss consequent on the removal or modification of the said obstruction or the construction of such work may be made before the Collector, and he shall deal with the same in the manner provided in Section 10.

62. Limitation of such claims.—No such claim shall be entertained after the expiration of one year from the occurrence of the loss complained of, unless the Collector is satisfied that the claimant had sufficient cause for not making the claim within such period.

1. Subs. by the A. O. 1950 for [Provl. Govt.] which had been subs. by the A. O. 1937 for [L. G.].

2. Subs. by the A. O. 1950 for [the Provl. Govt.] which had been subs.

by the A. O. 1937 for [the Govt.].
3. For the purposes of State tube-wells, read "Tube-well Officer" for "Canal Officer," see S. 6 of U. P. Act XII of 1936.

PART VIII¹*Of obtaining Labour for Canals and Drainage-works*

63. Definition of "labourer".—For the purposes referred to in this Part, the word "labourer" includes persons who exercise any handicraft specified in rules to be made in that behalf by the [State Government].²

64. Power to prescribe number of labourers to be supplied by persons benefited by canal.—In any District in which a canal or drainage work is constructed, maintained or projected by [the State Government]³ the [State Government]² may, if it thinks fit, direct the Collector—

- (a) to ascertain the proprietors, sub-proprietors or farmers, whose villages or estates are or will be, in the judgment of the Collector, benefited by such canal or drainage-work, and
- (b) to set down in a list, having due regard to the circumstances of the districts and of the several proprietors, sub-proprietors or farmers, the number of labourers which shall be furnished by any of the said persons, jointly or severally, from any such village or estate, for employment on any such canal or drainage-work when required as hereinafter provided.

The Collector may, from time to time, add to or alter such list or any part thereof.

65. Procedure for obtaining labour for works urgently required.—Whenever it appears to a Divisional Canal-officer duly authorized by the [State Government]¹ that, unless some work is immediately executed, such serious damage will happen to any canal or drainage-work as to cause sudden and extensive public injury,

and that the labourers necessary for the proper execution thereof cannot be obtained in the ordinary manner within the time that can be allowed for the execution of such work so as to prevent such injury,

the said officer may require any person named in such list to furnish as many labourers (not exceeding the number which, according to the said list, he is liable to supply) as to the said officer seems necessary for the immediate execution of such work.

Every requisition so made shall be in writing, and shall state—

- (a) the nature and locality of the work to be done ;
- (b) the number of labourers to be supplied by the person upon whom the requisition is made ; and
- (c) the approximate time for which and the day on which the labourers will be required ;

and a copy thereof shall be immediately sent to the Superintending Canal-officer for the information of the [State Government].²

The [State Government]² shall fix, and may from time to time alter, the rates to be paid to any such labourers : Provided that such

1. The provisions of this Pt. do not apply to State tube-wells, see S. 6 of U. P. Act XII of 1936.

2. *Subs.* by the A. O. 1950 for [Provl. Govt.] which had been *subs.* by the

A. O. 1937 for [L. G.].

3. *Sub.* by the A. O. 1950 for [the Provl. Govt.] which had been *subs.* by the A. O. 1937 for [Govt.].

rates shall exceed the highest rates for the time being paid in the neighbourhood for similar work. In the case of every such labourer, the payment shall continue for the whole period during which he is, in consequence of the provisions of this Part, prevented from following his ordinary occupation.

The [State Government]¹ may, * * *² direct that the provisions of this Part shall apply, either permanently or temporarily, as the case may be, to any district or part of a district for the purpose of effecting necessary annual silt-clearances, or to prevent the proper operation of a canal or drainage-work being stopped or so much interfered with as to stop the established course of irrigation or drainage.

66. Liability of labourers under requisition.—When any requisition has been made on any person named in the said list, every labourer ordinarily resident within the village or estate of such person shall be liable to supply, and to continue to supply, his labour, for the purposes aforesaid.

PART IX

Of Jurisdiction

67. Jurisdiction under this Act of Civil Courts.—Except where herein otherwise provided, all claims against [the State Government]³ in respect of anything done under this Act may be tried by the Civil Courts; but no such Court shall in any case pass an order as to the supply of canal-water to any crop sown or growing at the time of such order.

68. Settlement of differences as to mutual rights and liabilities of persons interested in water courses.—Whenever a difference arises between two or more persons in regard to their mutual rights or liabilities in respect of the use, construction or maintenance of a water-course, any such person may apply in writing to the Divisional Canal-officer⁴ stating the matter in dispute. [Such officer shall thereupon give notice]⁵ to the other persons interested that, on a day to be named in such notice, he will proceed to enquire into the said matter. And, after such enquiry, he shall pass his order thereon, unless he transfers (as he is hereby empowered to do) the matter to the Collector, who shall thereupon enquire into and pass his order on the said matter.

Such order shall be final as to the use or distribution of water for any crop sown or growing at the time when such order is made, and shall thereafter remain in force until set aside by the decree of a Civil Court.

1. Subs. by the A. O. 1950 for [Prov'l. Govt.] which had been subs. by the A. O. 1937 for [L. G.].

2. The words [with the previous sanction of the G. G. in C.] rep. by Pt. I of Sch. to Act IV of 1914.

3. Subs. by the A. O. 1950 for [the Prov'l. Govt.] which had been subs. by the A. O. 1937 for [Govt.].

4. For the purposes of State tube-wells, read "Divisional Officer" for

"Divisional Canal Officer", see S. 6 of U. P. Act XII of 1936.

5. For the purposes of State tube-wells, for these words the following words shall be deemed to be subs.:—"On receipt of such application or when in the opinion of the Divisional Officer any such difference is likely to arise he shall give notice", see S. 6 and Sch. of *ibid*.

Scope.—The Divisional Canal Officer has jurisdiction to decide each difference as it arises, and his decision can still be given, though a *warabandi* was already in existence and had been fixed by him some former time⁵. If in a proceeding under this section the officer omits to serve notice on any of the parties interested, his proceedings must be held to be vitiated on account of that defect⁶.

Civil Court—Jurisdiction.—The Civil Court can set aside the order of a Canal Officer on the ground that it has caused legal injury to some persons' legal rights, *e. g.*, it has resulted in a stoppage of water to which a party is entitled. The Court, however, cannot take upon itself to draw a new order of rotation—they are not Canal Officers. Once the defect in the order is removed it is for the Canal Officer to draw up a new list of rotation.⁷

69. Power to summon and examine witnesses.—Any officer empowered under this Act to conduct any inquiry may exercise all such powers connected with the summoning and examining of witnesses as are conferred on Civil Courts by the 'Code of Civil Procedure; and every such inquiry shall be deemed a judicial proceeding.

PART X

Of Offences and Penalties

70. Offences under Act.—Whoever, without proper authority and voluntarily, does any of the acts following, that is to say,—

(1) damages, alters, enlarges or obstructs any canal or drainage-work,

(2) interferes with, increases or diminishes the supply of water in, or the flow of water from, through, over or under, any canal or drainage-work,

(3) interferes with or alters the flow of water in any river or stream, so as to endanger, damage or render less useful any canal or drainage-work,

(4) being responsible for the maintenance of a water course, or using a water-course, neglects to take proper precautions for the prevention of waste of the water thereof, or interferes with the authorized distribution of the water therefrom, or uses such water in an unauthorized manner,

(5) corrupts or fouls the water of any canal so as to render it less fit for the purposes for which it is ordinarily used,

² (6) causes any vessel to enter or navigate any canal contrary to the rules for the time being prescribed by the [State Government]³ for entering or navigating such canal,

(7) while navigating on any canal, neglects to take proper precautions for the safety of the canal and of vessels thereon,

(8) being liable to furnish labourers under Part VIII of this Act, fails, without reasonable cause, to supply or to assist in supplying the labourers required of him,

(9) being a labourer liable to supply his labour under Part VIII of this Act, neglects, without reasonable cause, so to supply, and to continue to supply, his labour.]

1. For the purposes of the State tube-wells, the words, "except by the construction of a tube-well," shall be deemed to be *ins.* before the word "interferes", see S. 6 and Sch. of U. P. Act XII of 1936.

2. For the purposes of State tube-wells, cls. (6) to (9) shall be deemed to be *omit.*, see S. 6 and Sch. of U. P. Act XII of 1936.

3. *Subs.* by the A. O. 1950 for [Provl. Govt.] which had been *subs.* by the A. O. 1937 for [L. G.].

4. See now the Code of Civil Procedure, 1908 (Act V of 1908), U.C.A., Vol. V. p. 1.

5. 1929 L 260.

6. *Bura Mal v. Nur Ilahi*, 1933 L 76.

7. *Ramji Lal v. Local Government, Punjab*, 47 F L R 73.

(10) destroys or moves any level-mark or water-gauge fixed by the authority of a public servant,

(11) passes, or causes animals or vehicles to pass, on or across any of the works, banks or channels of a canal or drainage-work contrary to rules made under this Act, after he has been desired to desist therefrom,

(12) violates any rule made under this Act, for breach whereof a penalty may be incurred,

Penalty.—shall be liable, on conviction before a Magistrate of such class as the [State Government]¹ directs² in this behalf, to a fine not exceeding fifty rupees, or to imprisonment not exceeding one month, or to both.

Scope.—The Act does not contemplate that one man has the right to passage of water for the fields through the fields of another except that such right is derived from the canal authorities or obtained by private agreement³. The preventing of the digging of a water course for taking water from a canal does not come within this section⁴. A conviction under this section cannot be had, where the accused has not been explained as to which rule he has broken⁵. If a person forcibly opens canal distributory and diverts the flow of water without injuriously affecting the utility of the distributory, the proper section under which the accused can be convicted is Section 70.⁶ There must be a clear finding that there was a recognised water course which has been demolished or damaged or altered, before a person can be convicted⁷.

Authorised Distribution.—A distribution by the proprietary body only is not authorised distribution within the meaning of Section 70 (4).⁸

Section 70 (11) Scope.—The mere fact of travelling over the canal inspection road without a permit is no offence under the Act, the essence of the offence being that a person should continue to travel after he has been desired to desist therefrom and it is essential for the prosecution to prove this fact beyond doubt⁹.

Section 70 (12).—The acts of the agent do not fix liability on the principal, and the fact that accused's fields were being irrigated is not enough to fix opening of outlet on him¹⁰.

71. Saving of prosecution under other laws.—Nothing herein contained shall prevent any person from being prosecuted under any other law for any offence punishable under this Act:

Provided that no person shall be punished twice for the same offence.

72. Compensation to person injured.—Whenever any person is fined for an offence under this Act, the Magistrate may direct that the whole or any part of such fine may be paid by way of compensation to the person injured by such offence.

73. Power to arrest without warrant.—Any person in charge of or employed upon any canal or drainage work may remove from the lands or buildings belonging thereto, or may take into custody without a warrant and take forthwith before a Magistrate or to the nearest police station, to be dealt with according to law, any person who, within his view, commits any of the following offences:

1. Subs. by the A. O. 1950 for [Provl. Govt.] which had been subs. by the A. O. 1937 for [L. G.].
2. The offences specified in this section shall be triable by any Magistrate of the 1st or 2nd class, see not. no. 153-VI/16B—129, d. Jan. 13, 1905, in *Gaz.*, 1905, Pt. I. p. 25.
3. 1921 L 827=61 I C 717=22 Cr L J 429; *Ramji Lal v. Emperor*, 1942 A 102=1941 A L J 750=43 Cr L J 472=193 I C 127.
4. *Arura v. Emperor*, 27 I C 762=16

- Cr L J 202.
5. 1930 L 54=123 I C 530=31 Cr L J 528.
6. *Meesa Ram v. Emperor*, 1912 A 102=1941 A L J 750=43 Cr L J 472.
7. *Kanhaiya Singh v. Rex*, 1949 A W R 551.
8. *Emperor v. Pakkar*, 1 Lah. 604=22 Cr L J 203=60 I C 59.
9. *Emperor v. Mohd. Hasan*, 1943 L 298=45 Cr L J 143=209 I C 468.
10. 25 Cr L J 1199=82 I C 63.

- (1) wilfully damages or obstructs any canal or drainage work ;
- (2) without proper authority interferes with the supply or flow of water in or from any canal or drainage-work, or in any river or stream, so as to endanger, damage or render less useful any canal or drainage-work.

74. Definition of 'canal'.—In this Part the word "canal" shall (unless there be something repugnant in the subject or context) be deemed to include also all lands occupied by [the State Government]⁷ for the purposes of canals, and all buildings, machinery, fences, gates and other erections, trees, crops, plantations or other produce, occupied by or belonging to [the State Government]⁷ upon such lands.

PART XI

Of Subsidiary rules

75. Power to make, alter and cancel rules.—The [State Government]¹ may, from time to time, make rules³ to regulate the following matters

(1) The proceedings of any officer who, under any provision of this Act, is required or empowered to take action in any matter ;

(2) the cases in which, and the officers to whom, and the conditions subject to which, orders and decisions given under any provision of this Act, and not expressly provided for as regards appeal, shall be appealable ;

(3) persons by whom, [and]⁴ the time, place or manner at or in which, anything for the doing of which provision is made under this Act shall be done,

(4) the amount of any charge made under this Act, and

(5) generally to carry out the provisions of this Act.

The [State Government]¹ may, from time to time, * * *, alter or cancel any rules so made.

Publication of rules.—Such rules, alterations and cancellments shall be published in the [official Gazette]⁶, and shall thereupon have the force of law.

SCHEDULE

ACTS REPEALED

[Rep. by Act XII of 1873, S. 1 and Sch., Pt. II]

1. Subs. by the A. O. 1950 for [Provl. Govt.] which had been subs. by the A. O. 1937 for [L. G.].
2. The words [subject to the control of the G. G. in C] rep. by Act XXXVIII of 1920.
3. For rules re. appeals against the assessment of owner's rate, see nots. No. 1423/I—63, d. Sept. 17, 1889, no. N. T. 47-I. W./17B—64W, d. Sept. 3, 1936, and no. 12763-I. W./17B—64W, d. Oct. 8, 1936, in Gaz., 1889, Pt. I, p. 399, and *ibid*, 1936, Pt. I, pp. 1021 and 1168, respectively. For water-rate rules applicable to all canals, see not, no. 2236-I. M., d. May 16, 1924,

in Gaz. 1924, Pt. I, p. 575. For water-rate rules and occupier's rates on different canals, see S. R. O. For application of rules under this s. to State tube-wells, see not. no. 1480W/112W, d. Aug. 24, 1940, in Gaz. 1940, Pt. IA, p. 533. The word [and] was ins. by Act XII of 1891.

5. The words [subject to the like control] rep. by Act XXXVIII of 1920.
6. Subs. for [local official Gazette] by the A. O. 1937.
7. Subs. by the A. O. 1950 for [the Provl. Govt.] which had been subs. by the A. O. 1937 for [Govt.].

THE NORTHERN INDIA FERRIES ACT, 1878

(ACT No. XVII OF 1878)

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*[Adapted and modified upto date]**[Received the assent of the Governor-General on the 9th November, 1878]*

AN ACT

to regulate Ferries in Northern India

Preamble.—Whereas it is expedient to regulate ferries in [Uttar Pradesh, Punjab, Madhya Pradesh, Assam, Delhi and Ajmer]¹; It is hereby enacted as follows :

Prefatory Note.—For S. O R., see Gaz. of I., 1878, Pt. V, p. 135; for Preliminary R. S. Com., see *ibid*, p. 210; for Proceedings in Council, see *ibid*, Supplement, pp. 286, 335, 1104 and 1194.

I. Preliminary

1. Short title.—This Act may be called the Northern India Ferries Act, 1878.

1. Subs. by the A. O. 1919 as amended by the A. O. 1950 for [the Punjab, the North-Western Provinces, Oudh,

the Central Provinces, Assam and Ajmer and Merwara].

Local extent.—It extends only to [Uttar Pradesh, Punjab, Madhya Pradesh, Assam, Delhi and Ajmer.]¹

Commencement.—It shall come into force in each of the said territories on such date as the [State Government]¹ may, by notification in the official Gazette, fix in this behalf.

Note.—This Act has been extended to the areas mentioned in column 1 of this table under the Act or Order mentioned in column 2 and enforced in such areas under notification, if any, mentioned in column 3 with effect from the date mentioned in column 4 against each such area.

Areas	Act or Order under which extended	Notification, if any, under which enforced	Date from which enforced
1	2	3	4
1. Rampur district	Rampur (Application of Laws) Act, 1950.		
2. Banaras district	Banaras (Do.) Order, 1949.		
3. Tehri-Garhwal district.	Tehri-Garhwal (Do.) Order, 1949.		

The Act was brought into force in the U. P. on 1st January, 1873, *see Gaz.*, 1878, Pt. I, p. 2035.

2. [*Repeal*]. Rep. by Act I of 1938, S. 2 and Sch.

3. Interpretation clause.—In this Act the word “ferry” includes also a bridge of boats, pontoons or rafts, a swing-bridge, a flying-bridge and a temporary bridge, and the approaches to, and landing-places of, a ferry.

II. Public Ferries

4. Power to declare, establish, define and discontinue public ferries.—The [State Government]³ may from time to time—

- declare what ferries shall be deemed public ferries², and the respective districts in which, for the purposes of this Act, they shall be deemed to be situate;
- take possession of a private ferry and declare it to be a public ferry;
- establish new public ferries² where, in its opinion, they are needed;
- define the limits of any public ferry²,
- change the course of any public ferry², and
- discontinue any public ferry which it deems unnecessary;

Every such declaration, establishment, definition, change or discontinuance shall be made by notification in the official Gazette.

⁵[Provided that, when a river lies between two [States]⁴ the powers

1. Subs. by the A. O. 1948 as amended by the A. O. 1950 for [the territories respectively administered by the Lieutenant Governors of the Punjab and the North-Western Provinces and the Chief Commissioners of Oudh, the Central Provinces, Assam and Ajmer and Merwara.]

2. For public ferries established in

U. P.—*see* S. R. O.

3. Subs. by the A. O. 1950 for [Provl. Govt.] which had been subs. by the A. O. 1937 for [L. G.].

4. Subs. by the A. O. 1950 for [Provinces].

5. This proviso was sub's. by Act XXXVIII of 1920,

conferred by this section shall, in respect of such river, be exercised jointly by the [State Governments]¹¹ of those ¹²[States] by notification in their respective official Gazettes, * * *¹³]

Provided also that, when any alteration in the course or in the limits of a public ferry is rendered necessary by changes in the river, such alteration may be made, by an order under his hand, by the Commissioner of the division in which such ferry is situate, or by such other officer as the [State Government]² may, from time to time, appoint by name or in virtue of his office in this behalf.

5. Claims for compensation.—Claims for compensation for any loss sustained by any person in consequence of a private ferry being taken possession of under Section 4, shall be enquired into by the Magistrate of the district in which such ferry is situate, or such officer as he appoints in this behalf, and submitted for the consideration and orders of the [State Government].²

6. Superintendence of public ferries.—The immediate superintendence of every public ferry shall, except as provided in Section 7 [and Section 7A]¹, be vested in the Magistrate of the district in which such ferry is situate, or in such other officer as the [State Government]² may, from time to time, appoint³ by name or in virtue of his office in this behalf;

and such Magistrate or officer shall, except when the tolls at such ferry are leased, make all necessary arrangements for the supply of boats for such ferry, and for the collection of the authorized tolls leviable thereat.

7. Management may be vested in municipality.—The [State Government]² may direct⁴ that any public ferry situate within the limits of a town be managed by the officer or public body charged with the superintendence of the municipal arrangements of such town;

[and thereupon that ferry shall be managed accordingly].⁵

[7-A. Management may be vested in District Council or District or Local Board.—The [State Government]⁷ may direct⁸ that any public ferry, wholly or partly within the area subject to the authority of a District Council or a District Board or a Local Board in the ⁹[State] be managed by that Council or Board, and thereupon that ferry shall be managed accordingly].

¹⁰**[8. Letting ferry-tolls by auction.**—The tolls of any public

1. *Ins.* by S. 65 of Act XIV of 1883.

2. *Subs.* by the A. O. 1950 for [Provl. Govt.] which had been *subs.* by the A. O. 1937 for [L. G.].

3. For nots. as to the superintendence of ferries, see S. R. O.

4. For nots. declaring that certain ferries may be managed by certain public bodies, see S. R. O.

5. *Subs.* by A. O. 1937 for—
“and may further direct that all or any part of the proceeds from such ferry be paid into the municipal fund of such town; and thereupon such ferry shall be managed, and such proceeds or part thereof shall be paid accordingly.”

6. *Subs.* by the A. O. 1937 for S. 7-A, *ins.* by S. 64 of Act XIV of 1883.

7. *Subs.* by the A. O. 1950 for [Provl. Govt.].

8. For the nots. declaring that certain ferries may be managed by certain district boards, see S. R. O.

9. *Subs.* by the A. O. 1950 for [Province].

10. S. 8 was *subs.* by S. 1 of Act III of 1886.

11. *Subs.* by the A. O. 1950 for the [Provl. Govts.] which had been *subs.* by the A. O. 1937 for [Local Govts.].

12. The words [and in any case where the said Local Govts. fail to agree as regards the exercise of any such power they shall exercise such power subject to the control of the G. G. in ‘‘J rep. by the A. O. 1937.

13. *Subs.* by the A. O. 1950 for [Provinces].

ferry may, from time to time, be let by public auction for a term not exceeding five years, with the approval of the Commissioner or by public auction, or otherwise than by public auction for any term with the previous sanction of the [State Government]¹.

The lessee shall conform to the rules made under this Act for the management and control of the ferry, and may be called upon by the officer in whom the immediate superintendence of the ferry is vested, or, if the ferry is managed by a municipal or other public body under Section 7 or Section 7-A, then by that body, to give such security for his good conduct and for the punctual payment of the rent as the officer or body, as the case may be, thinks fit.

When the tolls are put up to public auction, the said officer or body, as the case may be, or the officer conducting the sale on his or its behalf, may, for reasons recorded in writing, refuse to accept the offer of the highest bidder, and may accept any other bid, or may withdraw the tolls from auction.

Scope.—The lessee of a public ferry under this section is merely the lessee of the tolls of a public ferry. Such a right is in no way a immovable property, and a suit under Section 9 of Specific Relief Act with respect to such right is not maintainable².

9. Recovery of arrears from lessee.—All arrears due by the lessee of the tolls of a public ferry on account of his lease may be recovered from the lessee or his surety (if any) by the Magistrate of the district in which such ferry is situate as if they were arrears of land revenue.

10. Power to cancel lease.—The [State Government]¹ may cancel the lease of the tolls of any public ferry on the expiration of six months' notice in writing to the lessee of its intention to cancel such lease.

When any lease is cancelled under this section, the Magistrate of the district in which such ferry is situate shall pay to the lessee such compensation as such Magistrate may, with the previous sanction of the [State Government]¹, award.

11. Surrender of lease.—The lessee of the tolls of a public ferry may surrender his lease on the expiration of [three months']² notice in writing to the [State Government]¹ of his intention to surrender such lease, and on payment to the Magistrate of the district in which such ferry is situate of such compensation as such Magistrate, subject to the approval of the Commissioner, may in each case direct.

12. Power to make rules.—Subject to the control of the [State Government]¹ the Commissioner of a division or such other officer³ as the [State Government]¹ may, from time to time, appoint in this behalf, by name or in virtue of his office, may from time to time, make rules⁴ consistent with this Act—

(a) for the control and the management of all public ferries within such division and for regulating the traffic at such ferries;

1a. *Mohammad Wahid Khan v. District Board, Bareilly*, 1936 A 856=1936 A L J 1122.

1. Subs. by the A. O. 1950 for [Provl. Govt.] which had been subs. by the A. O. 1937 for [L. G.].

2. Subs. for [one month's] by S. 2 of U. P. Act XXIX of 1948.

3. For appointment of District Magis-

trates to make rules under cl. (g), see not. no. 267/XII—881C, d. Feb. 20, 1899, in *Gaz.*, 1899, Pt. I, p. 126.

4. For rules for control and management of ferries, see not. no. 1226, d. May 9, 1881, in *Gaz.* 1881 Pt. I, p. 184.

- 1a(b) for regulating the time and manner at and in which, and the terms on which, the tolls of such ferries may be let by auction, and prescribing the persons by whom auctions may be conducted];
- (c) for compensating persons who have compounded for tolls payable for the use of any such ferry when such ferry has been discontinued before the expiration of the period compounded for; and
- (d) generally to carry out the purposes of this Act; and, when the tolls of a ferry have been let under Section 8, such Commissioner or other officer may, from time to time (subject as aforesaid), make additional rules consistent with this Act—
- (e) for collecting the rents payable for the tolls of such ferries;
- (f) in cases in which the communication is to be established by means of a bridge of boats, pontoons or rafts, or a swing bridge, flying bridge or temporary bridge, for regulating the time and manner at and in which such bridge shall be constructed and maintained and opened for the passage of vessels and rafts through the same; and
- (g) in cases in which the traffic is conveyed in boats, for regulating—
- (1) the number and kind of such boats, and their dimensions and equipment;
 - (2) the number of the crew to be kept by the lessee for each boat;
 - (3) the maintenance of such boats continually in good condition;
 - (4) the hours during which, and the intervals within which, the lessee shall be bound to ply; and
 - (5) the number of passengers, animals and vehicles, and the bulk and weight of other things, that may be carried in each kind of boat at one trip.

The lessee shall make such returns of traffic as the Commissioner or other officer as aforesaid may from time to time require.

13. Private ferry not to ply within two miles of public ferry without sanction.—¹[Except with the sanction of the Magistrate of the district or of such officer as the [State Government]² may, from time to time, appoint in this behalf, by name or in virtue of his office, no person shall establish, maintain or work a ferry to or from any point within a distance of two miles from the limits of a public ferry]:

Provided that, in the case of any specified public ferry, the [State Government]² may by notification³ in the official Gazette, reduce or increase the said distance of two miles to such extent as it thinks fit:

Provided also that nothing hereinbefore contained shall prevent persons plying between two places, one of which is without, and one within, the said limits, when the distance between such two places is not less than three miles, or apply to boats ⁴[which do not ply for hire

1a. *Subs.* by S. 1 (2) of Act III of 1886.

1. *Subs.* by S. 2 of Act III of 1886 for—

“No person shall, except with the sanction of the officer charged with the superintendence of a public ferry, keep a ferry boat for the purpose of plying for hire to or

from any point within a distance of two miles from the limits of such public ferry.”

2. *Subs.* by the A. O. 1950 for [Prov. Govt.] which had been *subs.* by the A. O. 1937 for [L. G.].

3. For such notes. *see* S. R. O.

4. *Ins.* by S. 2(2) of Act III of 1886.

or] which the [State Government]¹ expressly exempts from the operation of this section.

Scope.—The words used in this section are : “within a distance of two miles from the limits of a public ferry” and there is no reason why the distance contemplated by the section should be taken to be other than the shortest distance between the two points. The riverine distance between the two points on the bank cannot be taken because it may vary from time to time and according to seasons and does not seem to have been contemplated by the section².

14. Person using approaches etc. liable to pay toll.—Whoever uses the approach to, or landing-place of, a public ferry is liable to pay the toll payable for crossing such ferry.

15. Tolls.—Tolls, according to such rates as are, from time to time, fixed by the [State Government]¹, shall be levied on all persons, animals, vehicles and other things crossing any river by a public ferry and not employed or transmitted on the public service :

Provided that the [State Government]¹ may, from time to time, declare that any persons, animals, vehicles or other things shall be exempt from payment of such tolls.

Where the tolls of a ferry have been let under Section 8, any such declaration, if made after the date of the [lease]⁴, shall entitle the lessee to such abatement of the rent payable in respect of the tolls as may be fixed by the Commissioner of the division or such other officer as the [State Government]¹ may, from time to time, appoint in this behalf by name or in virtue of his office.

Note.—For rates of tolls, see Notifications No. 2330/IX—34, dated September 14, 1933, in Gazette, 1933, Pt. III, p. 357, No. 424/IX—187, dated March 6, 1935, in *ibid*, 1935, Pt. III, p. 112, No. 693/IX—34, dated May 14, 1938, in *ibid*, 1938, Pt. III, p. 191, No. 2407/IX, dated June 19, 1939, in *ibid*, 1939, Pt. III, p. 165, No. 3099/IX—34, dated August 21, 1939, in *ibid*, 1939, Pt. III, p. 228, No. 5148/IX—155—47, dated September 15, 1954, in *ibid*, 1949, Pt. III, p. 334 and No. 1974/IX—PWD—24FY—49, dated October 8, 1952 in *ibid* 1952 Pt. III, p. 410.

For imposition of tolls on motor bicycles crossing ferries in Jhansi district see Notification No. 456/IX—34, dated June 23, 1917, in Gazette, 1917, Pt. III, p. 669.

For rules as regards classification of rivers for levy of tolls, see Notifications No. 252/IX—209(10), dated March 16, 1925, No. 721/IX—209(10), dated August 11, 1926, and No. 1389/IX—34, dated August 20, 1934, in Gazette, 1925, Pt. III, p. 247, *ibid*, 1926, Pt. III, p. 323, and *ibid*, 1934, Pt. III, p. 312, respectively.

For exemption of members of the U. P. Legislature from payment of tolls, see Notification No. U-381/IX—531, dated July 28, 1939, in Gazette 1939, Pt. III, p. 202. For other exemptions, see S. R. O.

16. Table of tolls.—The lessee or other person authorized to collect the tolls of any public ferry shall affix a table of such tolls, legibly written or printed in the vernacular language, and also, if the Commissioner of the division so directs, in English, in some conspicuous place near the ferry,

List of tolls.—and shall be bound to produce, on demand, a list of the tolls, signed by the Magistrate of the district or such other officer as he appoints in this behalf.

17. Tolls, rents, compensation and fines are to form part of revenues of State.—⁵[All tolls, rents, compensation and fines under

1. Subs. by the A. O. 1950 for [Provl. Govt.] which had been subs. by the A. O. 1937 for [L. G.].

2. *Rex v. Jokuu*, 1948 A 299=1948 A L J 239=3 D L R (A) 18=1 L R 1948 A 320.

3. So far as this S. exempts from the payments of tolls, persons, animals vehicles or other things which are exempted by S. 3 of the Indian

Tolls (Army) Act, 1901 (Act II of 1901), it is rep. by S. 8 of that Act.

4. Subs. for the word [auction] by Act III of 1886, S. 1(3).

5. Subs. by the A. O. 1937 for original S. 17, which prescribed how the tolls, rents, compensation and fines under the Act should be disposed of in the States.

this Act (other than tolls received by any lessee) shall form part of the revenues of the (State)².

18. Compounding for tolls.—The [State Government]¹ may, if it thinks fit, from time to time, fix rates at which any person may compound for the tolls payable for the use of a public ferry.

III. Private Ferries

19. Power to make rules.—The Commissioner of the division may, with the previous sanction of the [State Government]¹, from time to time make rules for the maintenance of order and for the safety of passengers and property at ferries other than public ferries.

Scope.—This section gives powers to the Commissioner to make rules only (1) for the maintenance of order and (2) for the safety of passengers and property at private ferries. Any rule which does not come within these two classes is beyond his powers. The Commissioner cannot make a rule prohibiting the establishment of another ferry and such a rule would be *ultra vires* and a breach of such a rule is no offence³.

20. Tolls.—The tolls charged at such ferries shall not exceed the highest rates for the time being fixed under Section 15 for similar public ferries.

IV. Penalties and Criminal Procedure

21. Penalty for breach of provisions as to table of tolls, list of tolls, and return of traffic.—Every lessee or other person authorized to collect the tolls of a public ferry, who neglects to affix and keep in good order and repair the table of tolls mentioned in Section 16,

or who wilfully removes, alters or defaces such table, or allows it to become illegible,

or who fails to produce on demand the list of the tolls mentioned in Section 16,

and every lessee who neglects to furnish any return required under Section 12, shall be punished with fine which may extend to fifty rupees.

22. Penalty for taking unauthorized toll, and for causing delay.—Every such lessee or other person as aforesaid and any person in possession of a private ferry asking or taking more than the lawful toll, or without due cause delaying any person, animal, vehicle or other thing, shall be punished with fine which may extend to one hundred rupees.

Scope.—It cannot be said that when there is no toll, any amount charged as toll does not come under this section, as where no toll is chargeable any sum charged as toll must be deemed to be a charge in excess and, therefore, punishable under this section.⁴

23. Penalty for breach of rules made under Sections 12 and 19.—Every person breaking any rule made under Section 12 or Section 19 shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to two hundred rupees, or with both.

24. Cancellation of lease on default or breach of rules.—When any lessee of the tolls of a public ferry makes default in the payment of the rent payable in respect of such tolls, or has been convicted of an offence under Section 23, or, having been convicted of an offence under Section 21 or Section 22, is again convicted of an

1. Subs. by the A. O. 1950 for [Prov. Govt.] which had been subs. by the A. O. 1937 for [L. G.].
2. Subs. by the A. O. 1950 for [Province].

3. *Kunwar Chandra Bali Prasad v. Rex*, 4 D L R (A) 249.

4. *Shamsuddin v. Emperor*, 1947 A L J 505=1948 A 100=49 Cr L J 42.

offence under either of those sections, the Magistrate of the district may, with the sanction of the Commissioner of the division, cancel the lease of the tolls of such ferry, and make other arrangements for its management during the whole or any part of the term for which the tolls were let.

25. Penalties on passengers offending.—Every person crossing by any public ferry, or using the approach to, or landing-place thereof, who refuses to pay the proper toll, and every person—

who, with intent to avoid payment of such toll, fraudulently or forcibly crosses by any such ferry without paying the toll; or

who, obstructs any toll-collector or lessee of the tolls of a public ferry, or any of his assistants, in any way in the execution of their duty under this Act; or

who, after being warned by any such toll-collector, lessee or assistant not to do so, goes on or takes any animals, vehicles or other things into any ferry-boat or upon any bridge, at such a ferry, which is in such a state or so loaded as to endanger human life or property; or

who refuses or neglects to leave, or remove any animals, vehicles or goods from, any such ferry-boat or bridge, on being requested by such toll-collector, lessee or assistant to do so, shall be punished with fine which may extend to fifty rupees.

First Offenders Probation Act -Applicability.—Section 4 of the First Offenders Probation Act has no application to a case where a person commits an offence under this section by not paying the proper toll at ferry and the accused cannot be released on giving security as that would allow him to escape payment of toll altogether.¹

³**26. Penalty for maintaining private ferry within prohibited limits.**—Whoever establishes, maintains or works a ferry in contravention of the provisions of Section 13 shall be punished with fine which may extend to five hundred rupees, and with a further fine which may extend to one hundred rupees for every day during which the ferry is maintained or worked in contravention of those provisions.

27. Fines payable to lessee.—Where the tolls of any public ferry have been let under the provisions hereinbefore contained, the whole or any portion of any fine realized under Section 25 or Section 26 may, notwithstanding anything contained in Section 17, be, at the discretion of the convicting Magistrate or Bench of Magistrates, paid to the lessee.

28. Penalty for rash navigation and stacking of timber.—Whoever navigates, anchors, moors or fastens any vessel or raft, or stacks any timber, in a manner so rash or negligent as to damage a public ferry, shall be punished with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both; and the toll-collector or lessee of the tolls of such ferry or any of his assistants, may seize and detain such vessel, raft or timber pending the enquiry and assessment hereinafter mentioned.

29. Power to arrest without warrant.—The police may arrest without warrant any person committing an offence against Section 25 or Section 28.

1. *Jawahir v. Emperor*, 1945 A L J 82=1945 A 206=46 Cr L J 743.

2. *Subs.* by S. 2(3) of Act III of 1886 for—

“Whoever conveys for hire any passen-

ger, animal, vehicle or other thing, in contravention of the provisions of S. 13, shall be punished with fine which may extend to fifty rupees”.

30. Power to try summarily.—Any Magistrate or Bench of Magistrates having summary jurisdiction under Chapter XVIII^{1a} of the Code of Criminal Procedure may try any offence against this Act in manner provided by that Chapter.

31. Magistrate may assess damage done by offender.—Every Magistrate or Bench of Magistrates trying any offence under this Act may enquire into and assess the value of the damage (if any) done or caused by the offender to the ferry concerned, and shall order the amount of such value to be paid by him in addition to any fine imposed upon him under this Act; and the amount so ordered to be paid shall be leviable as if it were a fine, or, when the offence is one under Section 23, by the sale of the vessel, raft or timber causing the damage, and of anything found in or upon such vessel or raft.

The Commissioner of the Division may, on the appeal of any person deeming himself aggrieved by an order under this section, reduce or remit the amount payable under such order.

V. Miscellaneous

32. Power to take possession of boats, etc., on surrender or cancellation of lease.—When the lease of the tolls of any ferry is surrendered under Section 11 or cancelled under Section 24, the Magistrate of the district may take possession of all boats and their equipment, and all other material and appliances, used by the lessee for the purposes of such ferry, and use the same (paying such compensation for the use thereof as the [State Government]¹ may in each case direct) until such Magistrate can conveniently procure proper substitutes therefor.

33. Similar power in cases of emergency.—When any boats or their equipment, or any materials or appliances suitable for setting up a ferry, are emergently required for facilitating the transport of officers or troops of [the Government of India] on duty, or of any other persons on the business of [Government]³, or of any animals, vehicles or baggage belonging to such officers, troops or persons, or of any property of [Government]³, the Magistrate of the district may take possession of and use the same (paying such compensation for the use thereof as the [Central Government (where the transport is in connection with the affairs of the Central Government) and the [State Government]¹ in other cases]⁴ may in each case direct) until such transport is completed.

34. Jurisdiction of Civil Courts barred.—No suits to ascertain the amount of any compensation payable, or abatement of rent allowable, under this Act shall be cognizable by any Civil Court.

35. Delegation of powers.—The [State Government]¹ may, from time to time, delegate⁵, under such restrictions as it thinks fit, any of the powers conferred on it by this Act to any Commissioner of a divi-

1a. See now Ch. XXII of the Code of Criminal Procedure, 1898 (Act V of 1898), U. C. A., Vol. IV, p. 9.

1. Subs. by the A. O. 1950 for [Prov. Govt.] which had been subs. by the A. O. 1937 for [L. G.].

2. Subs. by the A. O. 1950 for [Her Majesty].

3. Subs. by the A. O. 1950 for [Her

Majesty].

4. Subs. by the A. O. 1937 for [L. G.].

5. For delegation of powers to Commissioners, see notes. no. 1833/LX, d. Nov. 9, 1908, and no. 39/LX—99, d. Jan. 10, 1914, in *Gaz.* 1908, Pt. I, p. 1173, and *ibid.* 1914, Pt. III, p. 24, respectively.

sion or Magistrate of a district, or to such other officer as it thinks fit, by name or by virtue of his office.

36. [Validation of proceedings since repeal of Regulation VI of 1819 in Punjab.] .Rep., by Act XII of 1891.

THE NORTH WESTERN PROVINCES AND OUDH ACT, 1890¹

(ACT NO. XX OF 1890)

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3. [Repealed.]		11. Board of Revenue of the North-Western Provinces to be the Board of Revenue of, and Chief Revenue-authority in, Oudh.	
4. [Repealed.]		12. to 53. [Repealed.]	
5. Laws in force in certain district of the Allahabad Division to apply to Jhansi.		54. Pending appeals.	
6. [Repealed.]		55 to 61. [Repealed.]	
7. Discharge of functions assigned to Deputy Commissioner and Commissioner by Act XVII of 1886.			PART III
8. Jhansi Division to cease to be a scheduled district.			<i>North-Western Provinces and Oudh</i>
9. Application of Act XII of 1887 to Jhansi and disposal of pending		62. Commencement of Part III.	
		63. Place where the Road may sit.	
		64. [Repealed.]	

Amended by Act XII of 1891²

Amended by Act XII of 1896³

Amended by Act II of 1899⁴

Amended by Act I of 1938

Amended by U. P. Act V of 1894⁵

Amended by U. P. Act III of 1899⁶

Amended by U. P. Act II of 1901⁷

Amended by U. P. Act III of 1901⁸

Amended by U. P. Act I of 1903⁹

Amended by U. P. Act IV of 1925¹⁰

Adapted and modified by the Government of India

(Adaptation of Indian Laws) Order, 1937

Adapted and modified by the Adaptation of Laws Order, 1950

[Received the assent of the Governor-General on the 16th October, 1890]

AN ACT

to provide for the better administration of the ¹¹North-Western Provinces and Oudh and to amend certain enactments in force in those Provinces and in Oudh.

- | | |
|---|-----------------------------------|
| 1. For S. O. R., see Gaz. of I., 1890, Pt. V, p. 221; for R. S. Com., see <i>ibid</i> , p. 135; and for Proceedings in Council, see <i>ibid</i> , Pt. VI, pp. 17 and 138. | 5. Rep. by U. P. Act II of 1906. |
| 2. Rep. by Act I of 1938. | 6. Rep. by U. P. Act IV of 1912. |
| 3. Rep. by U. P. Act IV of 1910. | 7. Rep. by U. P. Act III of 1926. |
| 4. <i>Supra</i> . | 8. Vol. III. |
| | 9. Vol. II. |
| | 10. Vol. IV. |
| | 11. Now U. P. |

Whereas it is expedient to provide for the better administration of the territories respectively administered by the ^{1a}Lieutenant-Governor of the North-Western Provinces and the ^{1a}Chief Commissioner of Oudh, and for that purpose to amend certain enactments which are in force in the said Provinces and in Oudh; It is hereby enacted as follows:

1. This Act may be called the North-Western Provinces and Oudh Act, 1890.

PART I

The North-Western Provinces

2. Commencement of Part I.—This Part shall come into force on such day¹ as the said ²Lieutenant-Governor may, by notification in the official Gazette, direct.

3 and 4. [*Amendment of Act XIX of 1873*] Rep. by the *United Provinces Land Revenue Act, 1901*, (U. P. Act III of 1901.)

And whereas it has been determined to annex the Jhansi Division comprising the districts of Jhansi, Jalaun and Lalatpur, to the Allahabad Division;

And whereas the said Jhansi Division is a scheduled district under the Scheduled Districts Act, 1874²;

And whereas it is expedient that the law in force in the said division should, on such annexation, be the same as the law in force in the temporarily-settled districts comprised in the Allahabad Division, and that the said division should cease to be a scheduled district;

It is hereby enacted as follows:

5. Laws in force in certain districts of the Allahabad Division to apply to Jhansi.—(1) All enactments which shall on the day⁴ when this Part comes into force be in the said temporarily-settled districts and not in the said Jhansi Division shall be deemed to come into force in that division on and from the said day.

(2) Except the Jhansi Encumbered Estates Act, 1882⁵, and the Jhansi and Morar Act, 1886⁶, all enactments which shall on the said day⁴ be in force in the said division and not in the said temporarily-settled districts, including the Jhansi Courts Act, 1867, and Act No. XXVII of 1867, shall be deemed to be repealed on and from the said day⁴ in the said division.

6. [*Amendment of Act XVI of 1882.* (Rep. by the *Bundelkhand Encumbered Estates Act, 1903* (*United Provinces Act I of 1903*)).

7. Discharge of functions assigned to Deputy Commissioner and Commissioner by Act XVII of 1885.—The function assigned to the Deputy Commissioner and the Commissioner by the Jhansi and Morar Act, 1886⁷, shall be discharged by the District Judge and the High Court, respectively, and references to Courts in the Jhansi district subordinate to the Commissioner shall be deemed to apply to the Civil Courts established in that district under the Bengal, North-Western Provinces and Assam Civil Courts Act, 1887.⁸

1a. Now Governor of U. P.

1. The 1st April, 1891, see not. no. 528/1—549-A, d. Mar. 20, 1891, in Gaz., 1891, Pt. I, p. 130.

2. Now Governor.

3. R.p. by the A. O. 1937.

4. That is, the 1st April 1891.

5. Rep. by the Bundelkhand Encum-

bered Estates Act, 1903 (U. P. Act I of 1903), Vol. II.

6. *Supra.*

7. *Supra.*

8. *Supra.* [Agra] has been subs. for [North-Western Provinces] by Act XVI of 1911.

S. Jhansi Division to cease to be a scheduled district.—

(1) On and from the said day^{1b} the said division shall cease to be a scheduled district; * * *^{1c}

D. Application of Act XII of 1887 to Jhansi, and disposal of pending cases.—(1)* * *^{1d}

(2) All cases or proceedings pending in any Civil Court in the said division on the said day³ shall be disposed of as follows :

- (a) if pending in the Court of a Tahsildar or of an Assistant Commissioner of the second class—by the Munsif;
- (b) if pending in the Court of an Assistant Commissioner of the first class—by the Subordinate Judge;
- (c) if pending in the Court of a Deputy Commissioner—by the District Judge;
- (d) if pending in the Court of the Commissioner—by the District Judge, unless the case pending is an appeal from a decree or order of the Deputy Commissioner, in which case the appeal shall be disposed of by the High Court.

(3) For the purposes of Sections 20 to 22, both inclusive of the Bengal, North-Western Provinces and Assam Civil Courts Act, 1887, all decrees and orders passed by Civil Courts in the said division and not appealed against before the said day^{1b} shall be deemed—

- (a) if passed by the Court of a Tahsildar or an Assistant Commissioner of the second class—to have been passed by a Munsif;
- (b) if passed by the Court of an Assistant Commissioner of the first class—to have been passed by a Subordinate Judge;
- (c) if passed by the Court of a Deputy Commissioner or the Commissioner—to have been passed by a District Judge.

(4) Where any Civil Court ceases by reason of the passing of this Act to have jurisdiction with respect to any case, any proceeding in relation to that case which, if that Court had not ceased to have jurisdiction, might have been had therein, may be had in the Court to which the business of the former Court is transferred by sub-section (2); but this sub-section shall not apply to cases for which provision is made in Section 623 or Section 649 of the Code of Civil Procedure.¹

(5) In the case of appeals from the decrees and orders mentioned in sub-section (3) the period of limitation shall be calculated in accordance with the provisions of Section 15 of the Jhansi Courts Act, 1867,² as though this Act had not been passed.

PART II*Oudh*

10. Commencement of Part II.—This Part shall come into force on such day³ as the Chief Commissioner of Oudh may, by notification in the official Gazette, direct.

11. Board of Revenue of the North-Western Provinces to be

1b. That is the 1st April, 1891.
 1c. The subsequent part of sub-s. (1) and sub-s. (2) *rep.* by S. 2 and Sch. of Act I of 1938.
 1d. Sub-s. (1) *rep. ibid.*
 1. See now Act V of 1908, U. C. A., Vol. V. p. 1.

2. Act XVIII of 1867 is *rep.* by s. 5(2) of this Act.
 3. The 1st January, 1891, see not. no. 2095/I—549 A, d. Dec. 20, 1890, in Gaz., 1890, Pt. I, p. 661.
 4. Now Governor of U. P.

the Board of Revenue of, and chief Revenue authority in, Oudh.—(1) On and from the day^{1b} on which this Part comes into force the Board of Revenue constituted under the North-Western Provinces Land Revenue Act, 1873^{1c} shall be deemed to be also; the Board of Revenue for the territories administered by the Chief Commissioner of Oudh,² and shall be known and designated as the Board of Revenue of the North-Western Provinces and Oudh.²

(2) All references made in any enactment as amended by this Part to the Board of Revenue shall be deemed, so far as they relate to Oudh; to refer to the said Board.

(3) In any enactment for the time being in force in the territories administered by the Chief Commissioner of Oudh, in which the expression "Chief Revenue-authority" or "Chief Controlling Revenue-authority" is used, the expression shall, subject to the provisions of any enactment passed after the said day¹, be construed, so far as the said territories are concerned, as referring to the Board of Revenue of the North-Western Provinces and Oudh.²

¹12 to 53. [*Repealed.*]

54. Pending appeals.—All appeals pending when this Part comes into force¹ from decrees or orders passed under the same Act shall be disposed of as if this Act had not been passed :

Provided that the ⁴[State Government] may, by order, transfer to the District Judge any appeals then pending before the Commissioner or Collector in cases in which the appeal will, under the Oudh Rent Act, 1886⁵, as amended by this Part, lie to the District Judge.

⁶55 to 61. [*Repealed.*]

PART III

The North-Western Provinces and Oudh.

62. Commencement of Part III.—This part shall come into force on such day⁷ as the ⁸Lieutenant-Governor of the North-Western Provinces and Chief Commissioner of Oudh may, by notification in the official Gazette, direct.

63. Place where the Board may sit.—(1) Notwithstanding anything * * * in Section 128 of the Oudh Rent Act, 1886⁵ the Board

1b. That is, the 1st January, 1891.

1c. Since *rep.* by S. 2 of the United Provinces Land Revenue Act, 1901 (U. P. Act III of 1901), but not so as to affect anything done under the Act of 1873—*see* S. 3.

1. That is, the 1st Jan., 1891.

2. New Board of Revenue of U. P.

3. These Ss. amended certain Central Acts:—

Ss. 12 to 34—Act XVII of 1876. S. 35—Acts XVIII of 1876 and XIV of 1878. Ss. 36 and 37—Act IV of 1878, Ss. 38—Act III of 1879. Ss. 39—42—Act XIII of 1879. S. 43—Act XXII of 1881, Ss. 44 to 53—Act XXII of 1886.

They have been *rep.* as follows:—

Ss. 12 to 16, 18 to 27 and 32 to 34 by U. P. Act III of 1901, Ss. 17, 35, 48 and 50 by Act XII of 1891, Ss. 28 to 31 by U. P. Act III of 1899, Ss. 36 and 37 by U. P. Act V of 1894, Ss. 38, 44 to 47, 49 and 51 to

53 by Act I of 1938, Ss. 39 to 42 by U. P. Act IV of 1925, and S. 43 by Act XII of 1896.

4. *Subs.* by the A. O. 1950 for [Provl. Govt.] which had been *subs.* by the A. O. 1937 for [Chief Commissioner].

5. *Rep.* by U. P. Act XVII of 1939, Vol. IV.

6. Ss. 55 to 60 amended Act XXII of 1886 and S. 61 amended Act IX of 1881. Ss. 55 and 57 to 61 were *rep.* by Act I of 1938 and S. 56 by Act XII of 1891.

7. The 1st January, 1891, *see* not. no. 2095/1—549-A, d. Dec. 20, 1890, in Gaz. 1890, Pt. I, p. 661.

8. Now the Governor of U. P.

9. S. 63 so far as it relates to Act XII of 1881, that is the words [in S. 152 of the North-Western Provinces Rent Act, 1881 or] *rep.* by the U. P. Act II of 1901.

of Revenue of the North-Western Provinces and Oudh¹ shall, for the disposal of cases under those Acts, sit in such place or places in the 'North-Western Provinces or Oudh as [the State Government]² may, by notification³ in the official Gazette, appoint in respect of cases under either of those Acts ;

(2) for the disposal of cases other than those referred to in subsection (1) the said Board may, subject to the orders of [the State Government]², sit in any place in the 'North-Western Provinces or Oudh that the Board thinks fit.

64. [*Amendment of Section 4, Act XIX of 1873.*] Rep. by the United Provinces Land Revenue Act, 1901 (U. P. Act III of 1901.)

THE NORTH-WESTERN PROVINCES VILLAGE AND ROAD POLICE ACT, 1873⁴

(ACT No. XVI OF 1873)

Amended by Act XVI of 1874⁶

Amended by Act XII of 1876⁷

Amended by Act XII of 1891⁸

Amended by the U. P. Act XIV of 1941⁹

Adapted and modified by the Adaptation of Laws Order, 1950

[*Received the assent of the Governor-General on the 21st November, 1873*]

AN ACT

*to consolidate and amend the law relating to Village and Road Police in the North-Western Provinces.*¹⁰

Preamble.—Whereas it is expedient to consolidate and amend the law relating to the village and road police in the ¹⁰North-Western Provinces of the Presidency of Fort William in Bengal ; it is hereby enacted as follows :

1. Now Board of Revenue U. P.
2. *Subs.* by the A. O. 1937 for [the Provl. Govt.] which had been *subs.* by the A. O. 1937 for [the said Lieutenant-Governor and Chief Commissioner].
3. For orders that the Board of Revenue may sit at the headquarters of any district in U. P. *see* not. no. 2097/I—549-A, d. Dec. 20, 1890, in Gaz. 1890, Pt. I, p. 661.
4. Now U. P.
5. For S. O. R., *see* Gaz. of I., 1873, Pt. V, p. 114 ; for Proceedings in Council, *see* *ibid*, Supplement, pp. 375, 408 ; *ibid* Extra, Supplement, d. 26th April, 1873, p. 8 ; and *ibid*, Supplement, 1873, pp. 1299 and 1319. This Act has been declared, by not. under the Scheduled Districts Act, 1874 (Act XIV of 1874) *rep.* by the A. O. 1937 to be in force in the Tarai Parganas—*see*

not. no. 1553, d. Sept. 22, 1876, in Gaz., 1876, Pt. I, p. 1278.

The Act has been extended to the merged estate of Rampur by the Rampur (Application of Laws) Act, 1950 (U. P. Act XII of 1950) and to the merged estates of Banaras and Tehri-Garhwal by Banaras (Application of Laws) Order, 1949 and Tehri-Garhwal (Application of Laws) Order, 1949 respectively.

6. *Rep.* by Act XII of 1876.
7. *Rep.* by Act XII of 1891.
8. *Rep.* by Act I of 1938.
9. This Act was made by the Governor in exercise of the powers assumed by him under S. 93 of G. of I. Act, 1935, and was published, with S. O. R., in Gaz., 1941, Pt. VII-A, p. 21. It was re-enacted by the U. P. Act XIII of 1948.
10. Now the State of Uttar Pradesh.

I—Preliminary

1. Short title.—This Act may be called the North-Western Provinces Village and Road Police Act, 1873 ;

Local extent.—¹[This Act extends only to the territories which were on the 21st of November, 1873, under the government of the Lieutenant-Governor² of the ³North-Western Provinces.]

* * * *

2. [*Repeal of enactments.*] Rep. by Act XVI of 1874.

II—Appointment of Village Police

3. Right of nomination of village policemen.—The nomination to the post of village-policeman shall be made by the zamindar of the village, or, where there are more zamindars than one, by the lambardar as their representative ; and, where there are more lambardars than one, the opinion of the majority (unless there is some special provision to the contrary in the village-administration paper) shall prevail.

4. Obligation to nominate.—Every person authorized to nominate to the office of village-policeman shall, within fifteen days after the occurrence of a vacancy in such office, nominate a proper person to the vacant post, and communicate the nomination to the Magistrate of the district.

5. Discretion to appoint or reject nominee.—The person so nominated shall, after due enquiry into his age, character and ability, be appointed or rejected [by the State Government.]⁵

6. Power to State Government to appoint.—(a) In default of such nomination within the said fifteen days, [the State Government]⁶ shall appoint such person as [it]⁷ thinks fit to the vacancy.

(b) *Procedure in case of rejection of nominee.*—If nomination has been made within the said fifteen days, but the nominee is rejected, the person authorized to nominate shall, within fifteen days from the date of such rejection, nominate another person to the vacant post ; and in default of such nomination, or if such nomination has been made but the nominee is again rejected, [the State Government]⁶ shall appoint such person as [it]⁷ thinks fit to the vacancy.

III—Appointment of Road Police

7. Appointment of road police.—Subject to the rules to be framed under Section 14, and for the time being in force, [the State Government]⁸ may, from time to time, appoint persons to be [road-police].⁸

1. *Subs.* by the A. O. 1937 for the original para. in which the words [so far as regards the repeal of Act no. III of 1869, this Act extends to the whole of British India, the rest of] were *rep.* by Act XII of 1891.
2. Now Governor.
3. Now the State of U. P.
4. The commencement cl. was *rep.* by Act XII of 1876.
5. *Subs.* by the A. O. 1950 for [by the Provl. Govt.] which had been *subs.*

- by the A. O. 1937 for [at discretion by such Magistrate or by some officer authorized by him in that behalf].
6. *Subs.* by the A. O. 1950 for [the Provl. Govt.] which had been *subs.* by the A. O. 1937 for [the Magistrate of the District].
7. *Subs.* for [he] by the A. O. 1937.
8. *Subs.* for [the Road Police of his district] by the A. O. 1937.

IV—Duties of Village and Road Police

8. Duties of village and road-policemen.—Every village policeman and every road policeman shall perform the following duties :

- (a) he shall give immediate information to the officer in charge of the police station appointed for his village or beat—
 - (1) of every unnatural, suspicious or sudden death occurring in the village of which he is chaukidar or within his beat ;
 - (2) of each of the following offences occurring in such village or on such beat (that is to say), murder, culpable homicide, rape, dacoity, theft, robbery, mischief by fire, house-breaking counterfeiting coin, causing grievous hurt, riot, harbouring a proclaimed offender, exposure of a child, concealment of birth, administering stupefying drugs, kidnapping, lurking house-trespass ; and
 - (3) of all attempts and preparations to commit, and abetments of, any of the said offences ;
- (b) he shall keep the police informed of all disputes which are likely to lead to any riot or serious affray ;
- (c) he shall arrest all proclaimed offenders, and all persons whom he may find in the Act of committing any offence specified in paragraph (a), clause (2), of this section ;
- (d) he shall observe, and from time to time report to the officer in charge of the police station within the jurisdiction of which his village or beat may be situate, the movements of all bad characters in or on such village or beat ;
- (e) he shall report to the officer in charge of such police station the arrival of suspicious characters in the neighbourhood ;
- (f) he shall supply to the best of his ability any local information which a Magistrate or any officer of police may require, and shall promptly execute all orders issued to him by competent authority.

9. Procedure on arrest by village or road policemen.—Whenever a village- policeman or road-policeman arrests any person, he shall take him, as soon as possible, to the police-station within the jurisdiction of which his village or beat is situate.

V—Liabilities of Village and Road Police

10. Dismissal of village or road policemen.—¹[Subject to the provisions of Article 311 of the Constitution, the State Government, or the Magistrate] of the district may dismiss any village-policeman or road-policeman for any misconduct or neglect of duty.

11. Acts punishable.—Every village-policeman and every road-policeman guilty of any wilful misconduct in his office, or of neglect of duty, such misconduct or neglect not being an offence within the meaning of the Indian Penal Code,²

or withdrawing from the duties of his office without permission, and without having given at least two months' notice of his intention to withdraw from such duties to the persons authorized to nominate or appoint under Sections 3 and 7 (as the case may be),

1. *Subs.* by the A. O. 1950 for [the Magistrate].

2. U. C. A., Vol. I, p. 214.

or offering any unnecessary personal violence to any person in his custody,

or violating any of the rules framed under Section 14, and for the time being in force,

Penalty.—shall be liable, on conviction before a Magistrate, to a penalty not exceeding three months' pay, or to imprisonment for a period not exceeding three months or to both.

12. Fines to be credited to such fund as Government appoints.—All fines levied under this Act on village-policemen or road policemen shall be credited to such fund as the [State Government]¹ from time to time appoints.

VI—Miscellaneous

13. Orders of Magistrate of district subject to control of Commissioner.—All orders of * * *² the Magistrate of the district under Section * * * 10 shall be subject to control, revision and alteration by the Commissioner to whom he is subordinate.

14. Power to make subsidiary rules.—The [State Government]³ may from time to time frame rules—

- (a) for the discipline of the village and road police ;
- (b) for regulating their numbers, location and duties ; and
- (c) for carrying out generally the purposes of this Act.

THE UNITED PROVINCES NURSES, MIDWIVES, ASSISTANT MIDWIVES AND HEALTH VISITORS REGISTRATION ACT, 1934⁴

(U. P. ACT No. XV OF 1934)

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1. *Subs.* by the A. O. 1950 for [Provl. Govt.] which had been *subs.* by the A. O. 1937 for [L. G.].
2. The words [and appointments made by] *omit.* by S. 2 of U. P. Act XIV of 1941, made by the Governor in exercise of the powers assumed by him under S. 93 of the G. of I. Act, 1935, and is continued in force by U. P. Act XIII of 1948, S. 2 and Sch.
3. The figures and word [5, 6, 7 or] *omit. ibid.*
4. For S. O. R., *See Gaz Extra*, d. Dec. 9, 1933, p. 12 ; for R. S. Com, *see ibid*, Extra, d. Feb. 14, 1934, pp.

1—3; for discussion, *see* L. C. Pro. d. Dec. 18, 1933, Dec. 19, 1933, Feb. 20, 1934, June 20, 1934, and June 23, 1934 in Vol. LX, pp. 601—603 and 617, Vol. LXI, pp. 253—266 and Vol. LXII, pp. 538, 567—568 and 580—481, respectively.

The Act has been extended to the merged state of Rampur by the Rampur (Application of Laws) Act, 1950 and to the merged state of Banaras and Tehri-Garhwal by the Banaras (Application of Laws) Order, 1949 and the Tehri-Garhwal (Application of Laws) Order, 1949 respectively.

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Amended by the U. P. Act. No. IV of 1942²

Amended by the U. P. Act. No. IX of 1952²

Amended by the U. P. Act. No. XVI of 1948³

Amended by the U. P. Act. No. XXXV of 1952⁴

*Adapted and modified by the Government of India
(Adaptation of Indian Laws) Order, 1937*

Adapted and modified by the Adaptation of Laws Order, 1950

[Received the assent of the Governor on July 7, 1934, and of the Governor-General on August 5, 1934, and was published⁵ under Section 81 of the Government of India Act on August 25, 1934.]

AN ACT

to provide for the registration of Nurses, Midwives, Assistant Midwives and Health Visitors in the United Provinces of Agra and Oudh.

Whereas it is expedient to provide for the registration of nurses, midwives, assistant midwives and health visitors in the United Provinces;

And whereas the previous sanction of the Governor-General under Section 80-A (3) (f) of the Government of India Act has been obtained to the passing of this Act;

It is hereby enacted as follows.

1. Short title, extent and commencement—(1) This Act may be called the United Provinces Nurses, Midwives, Assistant Midwives and Health Visitors Registration Act, 1934.

2. *Rep.* by S. 6 of U. P. Act no. XVI of 1948.

3. For S. O. R. see *Gaz. Extra.*, d. Oct. 28, 1947; for discussion see L. A. Pro. d. Nov. 10, 1947, in Vol. XLIII, pp. 630-635, d. Feb. 24, 1948, in Vol. XLIV, pp. 51 and 58-59, d. Oct. 18, 1948, in Vol. I, p. 34 and L. C. Pro. d. Dec. 9, 1947, in Vol. X, pp. 553-563, d. May 6, 1948, in Vol. XI, p. 525. For publication, see *Gaz. Extra.*, d. April 1, 1948, p. 3.

The Act received the assent of the Governor General on March 31, 1948 under Section 76 of the

Government of India Act, 1935, as adapted by the India (Provisional Constitution) Order, 1947.

4. For S. O. R. see *Gaz. Extra.*, d. Aug. 14, 1952, pp. 2-3; for discussion, see L. A. Pro., d. Aug. 18, 1952, in Vol. CVI, p. 76, d. Aug. 29, 1952, in Vol. CVII, pp. 372-378, d. Dec. 24, 1952, in Vol. CXVI and L. C. Pro., d. Sep. 16, and 18, 1952, in Vol. XXVI, p.

Received the assent of the President on Dec. 2, 1952, and was published in *Gaz. Extra.*, d. Dec. 5, 1952, pp. 3-5.

5. See *Gaz.*, 1934, Pt. VII, pp. 53-58.

(2) It extends to the whole of [Uttar Pradesh]¹. * * *

(3) It shall come into force on such date² as the [State Government]³ may, by notification in the [Official Gazette]⁴ direct.

2. Definitions.—In this Act, unless there is something repugnant in the subject or context—

- (a) "the Council" means the Council under Section 3 of this Act;
- (b) "notification" means a notification published in the [Official Gazette]⁴;
- (c) "prescribed" means prescribed by the rules and regulations made under this Act;
- (d) "registered medical practitioner" means a person registered under the United Provinces Medical Act; 1917⁵;
- (e) "the Registrar" means a person appointed under Section 16 (1) (a) or (b) to perform the duties of the Registrar under this Act;
- (f) "registers" means the registers maintained under Section 17 of this Act;
- (g) subject to the provisions of Section 2(d) "registered" means registered under the provisions of this Act, and "unregistered" means not registered under the provisions of this Act;
- (h) "nurse" means a person who holds a certificate in nursing from any institution notified by the [State Government]³ in this behalf or who has been registered under clause (b) of Section 23 and shall include a male nurse;
- (i) "midwife" means a person who holds a diploma in midwifery from any institution recognized by the Council in this behalf, or who has been registered under clause (b) of Section 23;
- (j) "assistant midwife" means a person who holds a diploma as an assistant midwife from any institution recognized by the Council in this behalf or who has been registered under clause (b) of Section 23; and
- (k) "health visitor" means a person who holds a health visitor's certificate of [Uttar Pradesh]⁶ Health School or of any other institution notified by the [State Government]³ in this behalf.

3. Establishment and incorporation of the Council.—A Council shall be established and called "the United Provinces Nurses and Midwives Council"; and such Council shall be a body corporate and have perpetual succession and a common seal and shall by the said name sue and be sued.

"4. Constitution of the Council.—(1) The Council shall consist of [the following members]⁷ merely—

1. *Subs.* by the A. O. 1950 for [the United Provinces]. The words [of Agra and Oudh] *omit*; by *ibid.*
2. The Act came into force on Jan. 1, 1937 see not. no. 2147/V-165-1932, d. Dec. 23, 1936, in Gaz. 1936 Pt. I, p. 1455.
3. *Subs.* by the A. O. 1950 for [Prov. Govt.] which had been *subs.* by the A. O. 1937 for [L. G.].

4. *Subs.* for [U. P. Govt. Gazette] by the A. O. 1937.
5. Vol. III.
6. *Subs.* by the A. O. 1950 for [United Provinces] or [the United Provinces].
7. *Subs.* by S. 2(1) of U. P. Act XXXV of 1952 for the figures and the word [24 members.]

^{1b}[(a) *As ex-officio members—*

- (i) the Director of Medical and Health Services, Uttar Pradesh;
- (ii) the Additional Director of Medical and Health Services, Uttar Pradesh;
- (iii) the Deputy Director of Medical and Health Services (Women), Uttar Pradesh;
- (iv) the Assistant Director of Medical and Health Services (Maternity and Child Welfare Section), Uttar Pradesh;
- (v) the Superintendent of Nursing Services, Uttar Pradesh, Lucknow.
- (vi) the Superintendent, Silver Jubilee Health School, Lucknow; and
- (vii) the Superintendent, Kamla Nehru Hospital, Allahabad].

^{1c}[(b) *Elected Members—*

- (i) One non-official registered medical practitioner to be elected by the Governing Body of the State Medical Faculty, ²[Uttar Pradesh] from among its own members.
- (ii) Two members of ²[Uttar Pradesh] Legislative Assembly elected by the members of that Assembly of whom one at least should be a woman.
- (iii) One member of ²[Uttar Pradesh] Legislative Council elected by the members of that Council.
- (iv) Four registered nurses to be elected by the registered nurses.
- (v) Two representatives of the registered midwives and assistant midwives to be elected jointly by them.
- (vi) One registered Health Visitor elected by the registered Health Visitors.

(c) *Nominated members—*

- (i) Four members to be nominated by the ¹[State Government] from among Nursing Superintendents, Matrons and Sister Tutors employed in State or State-aided hospitals in ²[Uttar Pradesh].
- (ii) One member to be nominated by the ¹[State Government] from among Medical Superintendents belonging to a training institution.
- (iii) One midwife to be nominated by the ¹[State Government] who should be an employee of a Government or State-aided hospital.
- (iv) A registered nurse resident in ²[Uttar Pradesh] nominated by ²[Uttar Pradesh] Branch of the Trained Nurses' Association of India].

³[(2) The Director of Medical and Health Services, Uttar Pradesh and the Additional Director of Medical and Health Services, Uttar Pradesh shall be the *ex-officio* President and Vice-President respectively of the Council.]

(3) If an *ex-officio* member refuses to act or resigns or is deemed to have vacated his seat or is disqualified from membership the ⁴[State

1b. *Subs.* by *ibid.*

1c. *Subs.* by S. 2 of U. P. Act XVI of 1948.

1. *Subs.* by the A. O. 1950 for [Prov. Govt.].

2. *Subs.* by *ibid.* for [United Provinces] or [the United Provinces].

3. *Subs.* by S. 2 (2) of U. P. Act XXXV of 1952 for the words

[Inspector-General of Civil Hospitals, Uttar Pradesh, shall be the President and the Director of Public Health, the Vice-President of the Council].

4. *Subs.* by the A. O. 1950 for [Prov. Govt.] which had been *subs.* for [L. G.] by the A. O. 1937.

Government] shall, notwithstanding the provisions of sub-section (1) of this section, nominate some other person of the Council in his place.

5. Nomination of members in default of election.—If any electoral body referred to in Section 4 does not, in the case of a casual vacancy referred to in Section 9 within three months and in any other case by such date as may be prescribed elect a qualified person to be a member of the Council, the ³[State Government] shall nominate a member, and the person so nominated shall be deemed to be a member of the Council as if duly elected by such body.

6. Publication of names of members.—The name of every person elected or nominated a member of the Council shall be published by the ³[State Government] in the [Official Gazette]⁴.

7. Leave of absence to members.—The Council may permit any member to be absent from meetings of the Council for a period not exceeding six months.

8. Casual Vacancy.—(1) A member of Council shall be deemed to have vacated his seat—

(a) if absent, otherwise than for a reason considered adequate by the Council, from three consecutive meetings of the Council; or

(b) if out of India for a period exceeding six consecutive months; or

(c) if he becomes subject to any of the disabilities set forth in Section 11; or

(d) if, having been elected under Section 4 (1) (b) he ceases to be a registered medical practitioner or his name is removed from the registers as the case may be; ¹[or].

²[(e) if being a nominated member he ceases to belong to the appropriate categories referred to in sub-section (1) of Section 4.]

(2) On the occurrence of any vacancy referred to in sub-section (1), the President shall forthwith report the fact of such vacancy to the [State Government]³.

9. Filling casual vacancies.—⁴[If any member of the Council, whether elected or nominated, under sub-section (1) of Section 4 dies or resigns his membership or ceases to be a member under the provisions of sub-section (1) of Section 8, the vacancy shall be filled within three months by a fresh election or nomination, as the case may be, in accordance with the provisions of sub-section (1) of Section 4 and in default of election, by nomination in accordance with the provisions of Section 5.]

10. Term of office of members.—(1) The term of office of members of the Council other than *ex-officio* members, shall be three years from the date of election or nomination:

Provided that the term of office of a member elected or nominated under Section 9 shall be the residue of the term of office of the member in whose place he was elected or nominated:

1. The fullstop was converted into semi-colon and the word [or] was add. by S. 3 (a) of U.P. Act XXXV of 1952.

2. Ins. by S. 3 (b) of *ibid*.

3. Subs. by the A. O. 1950 for [Provl.

Govt.] which had been subs. for [L. G.] by the A. O. 1937.

4. Subs. by S. 4 of U.P. Act XXXV of 1952 for the original S. 9.

5. Subs. for (U. P. Govt. Gazette) by the A. O. 1937.

¹[Provided further that where a member elected under sub-clause (ii) or (iii) of clause (b) of sub-section (1) of Section (4) ceases to be a member of the Uttar Pradesh Legislative Assembly or the Uttar Pradesh Legislative Council, as the case may be, he shall cease to be a member of the Council.]

(2) An outgoing member, if not disqualified under Section 11, shall be eligible for re-election or renomination.

11. Disqualification for membership.—A person shall be disqualified for being a member of the Council if such person—

(a) has been sentenced by a criminal court to imprisonment for an offence punishable with imprisonment for a term exceeding three months or to transportation, such sentence not having subsequently been reversed or remitted or the offender pardoned, and such person's disqualification on account of such sentence not having been remitted by an order which the [State Government]² is hereby empowered to make, if it thinks fit, in this behalf;

(b) is an undischarged insolvent ; or

(c) has been adjudged by a competent court to be of unsound mind.

12. Quorum and voting.—(1) No business shall be transacted at a meeting of the Council unless a quorum of eight members be present.

(2) Save as otherwise provided in Section 21 (1), all questions arising at a meeting of the Council shall be decided by the votes of the majority of the members present and voting or in the case of an equality of votes by the second or casting vote of the President of the Council, or in his absence, of the member presiding at the meeting.

13. Validity of acts and proceedings.—No act or proceeding of the Council shall be deemed invalid merely by reason of a vacancy in the Council or of a defect in the election or nomination of a person acting as a member of the Council.

14. Meeting of the Council and constitution of committees.—(1) The Council shall, subject to the provisions of this Act and of any rules made by the [State Government]³ under this Act, make regulations in respect of—

(a) the mode of transaction of business including provision for decisions on emergent matters by circulation of papers to members, and for co-opting persons specially qualified to advise on any particular matter before the Council;

(b) the times and places at which its meetings shall be held ;

(c) the conduct of business thereat ; and

(d) the constitution of committees, the delegation to such committees of any powers or duties of the Council under this Act, and the quorums and procedure of such committees in the transaction of their business.

(2) Until such time as the regulations referred to in sub-section (1) have been made it shall be lawful for the President of the Council to summon a meeting of the Council at such time and place as he thinks fit, by letter addressed to each member of the Council.

1. Add. by U. P. Act XXV of 1954.

2. Ins. by S. 3 (b) of *ibid.*

3. Subs. by A. O. 1950 for [Provl.

Govt.] which had been subs. for [L. G.] by the A. O. 1937.

15. Payment of expenses to members.—There shall be paid to the members of the Council and Committees such travelling and other expenses as may from time to time be prescribed by regulations under Section 33(3)(d).

16. Appointment of Registrar and other officers.—(1) With the previous sanction of the [State Government]¹ the Council—

(a) shall appoint a Registrar;

(b) may grant leave to such Registrar and appoint a person to act in his place; and

(c) shall pay to the Registrar and to the person, if any, appointed to act in his place such salary and allowances (if any) as the Council may determine.

(2) The Council may appoint such other officers and such clerks and servants as it may consider necessary for the purpose of this Act, and shall pay them such salaries and such allowances (if any) as with the previous sanction of the [State Government]¹ the Council may determine.

(3) The Registrar shall act as Secretary and Treasurer to the Council.

17. Orders by Council for maintenance of registers.—(1)

The Council shall, as soon as conveniently may be after this Act comes into force, and from time to time as occasion may require, make orders for regulating the formation, maintenance and publication of registers of nurses, midwives, assistant midwives and health visitors according to their respective qualifications.

(2) The said registers shall be kept in such form or forms as may be prescribed.

18. Registrar's functions in respect of registers.—(1) The Registrar shall keep the registers mentioned in Section 17 in accordance with the provisions of this Act and of any orders made by the Council, and shall from time to time make all the necessary alterations in the registered addresses or appointments of such nurses, midwives, assistant midwives, and health visitors, and erase the names of any registered nurses, midwives, assistant midwives or health visitors who may have died or ceased to live and practise in India.

(2) To enable the Registrar to fulfil the duties imposed upon him by sub-section (1) he may send through the post a letter to any person registered as a nurse, midwife, assistant midwife, or health visitor, addressed according to the registered address or appointment of such person to inquire whether he has ceased to practise or whether his appointment has been changed; and, if no answer is received to any such letter within a period of six months from its despatch, the Registrar may erase the name of such person from the register in which it is entered:

Provided that any name erased under this sub-section may be re-entered in the register under the direction of the Council.

19. Erasure of names from registers on notice of death.—

(1) Every Registrar of Deaths who receives notice of the death of any person whose name he knows to be entered in one of the registers of nurses, midwives, assistant midwives and health visitors shall forthwith transmit

1. *Subs.* by A. O. 1950 for [Provl. Govt.] which had been *subs.* for

[L. G.], by the A. O. 1937.

by post to the Registrar a certificate of such death signed by him and stating particulars of the time and place of death.

(2) On receipt of such certificate or any other reliable information regarding such death, the Registrar shall erase the name of the deceased person from the register in which it is entered.

20. Removal of fraudulent and incorrect entries from registers.—Any entry in the registers of nurses, midwives, assistant midwives, or health visitors which is proved to the satisfaction of the Council to have been fraudulently or incorrectly made, may be removed under the written order of the Council:

Provided that before action is taken under this section, notice shall be given to the person concerned, whose objections, if any, shall be heard and considered.

21. Power of Council to prohibit entry in or to direct removal from the registers, etc.—(1) The Council may, upon reference from the Registrar or otherwise, prohibit the entry in, or direct the removal from, the registers of nurses, midwives, assistant midwives or health visitors of the name of any nurse, midwife, assistant midwife, or health visitor or suspend such person's registration on any of the following grounds, namely—

- (a) that such person has been convicted by any court of any non-bailable offence, such conviction not having been subsequently set aside or remitted or the offender pardoned;
- (b) that such person has been guilty of conduct which in the opinion of the Council indicates that she is not a fit or proper person to practise as a nurse, midwife, assistant midwife or health visitor;
- (c) that there are defects in the character of such person which in the opinion of the Council would render the entry in, or the retention of, the name of such person in the registers undesirable:

Provided that no action shall be taken by the Council under this section until after due inquiry (at which an opportunity shall be given to the person concerned to be heard in defence and to appear, either in person or by counsel, vakil, pleader, or attorney, and which may, in the discretion of the President of the Council be held *in camera*) the Council by a majority of two-third of the members present and voting at the meeting of the Council, shall find that there is ground for taking action against the person concerned.

(2) The Council may direct that the name of any person against whom an order has been passed under sub-section (1) shall be entered or re-entered or continue to be entered in the registers as the case may be.

22. Appeal against order of the Council.—Any person aggrieved by an order of the Council under Section 20 or Section 21 may, within three months from the date of receiving notice of such order, appeal to the [State Government]¹ against such order and the decision of the [State Government]¹ on any such appeal shall be final.

1. Subs. by A. O. 1950 for [Prov. Govt.] which had been subs. for

[L. G.] by the A. O. 1937.

23. Persons entitled to be registered.—The following persons shall, subject to the rules and regulations made under this Act and to the payment of such fees as may be prescribed, be entitled to have their names entered in the registers of nurses, midwives, assistant midwives, and health visitors, namely—

- ^{1a}[(a) persons who hold qualifications in nursing or midwifery or health visiting recognized under the India Nursing Council Act, 1947;
- (b) persons who hold assistant midwifery or certified midwifery certificates of the U. P. State Medical Faculty; and
- (c) persons who may be registered as nurses, midwives, or health visitors under a scheme of reciprocity under the provisions of Section 10 of the India Nursing Council Act, 1947 by the Indian Council of Nursing constituted under the said Act.]

Provided that nurses, midwives, assistant midwives and health visitors who are at the commencement of this Act enrolled on the registers maintained by [Uttar Pradesh]¹ State Medical Faculty shall be entitled to have their names transferred, according to their qualifications, to the appropriate registers to be maintained under this Act.

24. * * *

25. Registration not to qualify for registration under U. P. Act III of 1917.—The certificate of registration under this Act shall not confer upon any person any right or title to be registered under the United Provinces Medical Act, 1917³ or to assume any title, name or designation implying that such person is by law recognized as a registered medical practitioner, or that he or she is entitled to grant any medical certificate or any certificate of death or still-birth, or to undertake the charge of cases of abnormality or of diseases in connexion with parturition.

26. Disability of unregistered persons.—Except with the general or special sanction of the [State Government]⁴ or of any officer authorized by it in this behalf no person unless registered as a nurse, midwife, assistant midwife or health visitor shall from the commencement of this Act hold in or in connexion with any dispensary, hospital, asylum, infirmary, lying-in-hospital or maternity and child-welfare centre which is supported wholly or partially out of public funds any appointment designated as that of matron, superintendent of nursing-sister, staff nurse, nurse, midwife, assistant midwife or health visitor or indicating that the holder has been trained as a nurse, midwife, assistant midwife or health visitor.

27. Disposal of fees.—All fees and other monies received by the Council under this Act shall be applied for the purposes of this Act in such manner as may be prescribed.

28. Publication of and presumption as to entries in annual lists.—(1) The Registrar shall in every year on or before a date to be fixed by the Council in this behalf, cause to be printed and published correct lists of the names for the time being entered in the registers of nurses, midwives, assistant midwives and health visitors, setting forth—

1a. Subs. by S. 5 of U. P. Act XXXV of 1952 for the original clauses (a) and (b).

1. Subs. by A. O. 1950 for [the United Provinces].

2. Del. by S. 6 of U. P. Act XXXV

of 1952.

3. Vol. III.

4. Subs. by the A. O. 1950 for [Provl. Govt.] which had been subs. by the A. O. 1937 for [L. G.].

- (a) all names entered in the registers, arranged in alphabetical order according to surnames,
- (b) the registered address or appointment of each person whose name is so entered in any of the registers, and
- (c) the registered qualification of each such person and the date on which such qualification was certified.

(2) Every court shall presume that any person whose name is entered in the latest of such lists is duly registered under this Act, and that any person whose name is not entered is not registered under this Act :

Provided that in case of any person whose name does not appear in such printed lists, a certified copy signed by the Registrar and sealed with the Seal of the Council, of the entry of the name of such person in a register of nurses, midwives, assistant midwives or health visitors, shall be evidence that such person is registered under this Act ; and upon the production of such evidence every court shall presume that such person is so registered :

Provided also that a certificate signed by the Registrar and sealed with the Seal of the Council, stating that the name of a person borne on the list of nurses, midwives, assistant midwives or health visitors, as the case may be, has been removed from such register and specifying the date of such removal shall be evidence that such person is not registered under this Act and of the date from which he or she ceased to be registered, and on the production of such evidence every court shall presume that such person ceased to be registered from the date specified.

29. Power to make arrangements for local supervision.—

The Council may, with the previous sanction of the ¹[State Government] make such arrangements as it thinks fit for local supervision over nurses, midwives, assistant midwives and health visitors registered under the Act.

30. Penalty for dishonest use of certificate, procuring registration by false means and falsification of register or certificate.—Any person who—

- (a) dishonestly makes use of any certificate of registration issued under the provisions of this Act to such or any other person ;
- (b) procures or attempts to procure registration under the provisions of this Act by making or procuring or causing to be made or produced any false or fraudulent declaration, certificate or representation, whether in writing or otherwise ; or
- (c) wilfully makes or causes to be made any falsification in any matter relating to the registers maintained or the certificates issued under the provisions of this Act,

shall be punishable on conviction, with a fine which may extend to three hundred rupees.

31. Penalty on unregistered persons representing themselves to be registered.—Any person, who, not being registered under the provisions of this Act, assumes or uses the name or title of a registered nurse, midwife, assistant midwife, or health visitor, or uses any name, title, addition, description, signboard or other such thing implying

1. Subs. by the A. O. 1950 for [Provincial Government] which had

been subs. for [L. G.] by the A. O. 1937.

that such person is a registered nurse, midwife, assistant midwife or health visitor, as the case may be, shall be punishable, on conviction, with a fine which may in the case of a first offence, extend to fifty rupees and, in the case of a second or any subsequent offence, to three hundred rupees.

32. Cognizance of offences.—(1) No court shall take cognizance of any offence punishable under this Act except upon complaint made by order of the [State Government]¹ or by the Council with the previous sanction of the [State Government]¹.

(2) No court inferior to the court of a District Magistrate or a Magistrate of the first class shall try any offence punishable under this Act.

33. Rules and regulations.—(1) The [State Government]¹ may from time to time, after previous publication, make rules² consistent with this Act, to carry out the provisions of the Act.

(2) In particular, and without prejudice to the generality of the power conferred by sub-section (1), the [State Government]¹ may make rules²—

- (a) to regulate elections under this Act ;
- (b) to prescribe the form or forms of registers of nurses, midwives, assistant midwives and health visitors to be maintained under this Act ;
- (c) to regulate, supervise and restrict within due limits the practice of their profession by registered nurses, midwives, assistant midwives and health visitors ;
- (d) to prescribe the powers, duties and functions of the authorities charged with local supervision ;
- (e) to regulate the procedure to be followed by the Council—
 - (i) in conducting any inquiry under the proviso to Section 21 (1) of the Act ; and
 - (ii) in withdrawing an order prohibiting or suspending the entry of any name in the registers or in making a re-entry in the registers of the name of any nurse, midwife, assistant midwife or health visitor, whose name has been removed from the registers ;
- (f) to regulate the procedure to be followed in disposing of appeals from the decisions of the Council ; and
- (g) to regulate the application of fees and other monies received by the Council under or for the purposes of this Act.

(3) In addition to the powers conferred by Section 14, the Council may, with the previous sanction of the [State Government]¹ make regulations³ -

- (a) to regulate the maintenance of registers and the conditions of admission thereto under Section 23 * * * and to prescribe the form of application for such admission ;
- (b) to regulate the conduct ⁴[of examinations for nurses, midwives, assistant midwives and health visitors or] of any

1. Subs. by the A. O. 1950 for [Provincial Government] which had been subs. for [L. G.] by A. O. 1937.

2. For rules, see Not. No. 3914/IV—308-38, d. Jan. 5, 1939, in *Gaz.* 1939. Pt. I, pp. 5—15.

3. For regulations, see Not. No. 263/

IA—2, d. Sep. 24, 1938, in *Gaz.*, 1938, Pt. I, pp. 1205—1219.

4. The words and figures [and Section 24] del. by S. 7 of U. P. Act XXXV of 1952.

5. Ins. by S. 5 (i) of U. P. Act XVI of 1948.

- ¹[other] examinations which may be prescribed as a condition of admission to the register and any matters ancillary to or connected with any such examinations ;
- (c) to prescribe the travelling and other expenses, pay-entry of names erased or removed from the register ;
 - (d) to regulate the publication of annual lists of registered nurses, midwives, assistant midwives and health visitors ;
 - (e) to prescribe the travelling and other expenses payable to the members of the Council or Committees ;
 - (f) to regulate the accounts of the Council and their audit ; and
 - (g) generally to provide for any matters with respect to which the Council think provision should be made for the purposes of this Act, and to prescribe anything which under this Act is to be prescribed.
- (4) All rules and regulations made under this Act shall be published in the² [Official Gazette].

34. Certain persons to be public servants.—Every person appointed under sub-sections (1) and (2) of Section 16 shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code.³

35. Procedure in inquiries and appeals.—For the purpose of any inquiry held under Section 21 the Council shall be deemed to be a court within the meaning of the Indian Evidence Act, 1872,⁴ and shall exercise the powers of a Commissioner appointed under the Public Servants (Inquiries) Act, 1850⁵ and every such inquiry shall be conducted, as far as may be, in accordance with the provisions of Section 5 and Sections 8 to 10 of the said Public Servants (Inquiries) Act, 1850⁵.

36. Bar to suit and legal proceedings.—No suit or other legal proceedings shall lie in respect of an act done in good faith in the exercise of a power conferred by this Act on the ⁶[State Government] the Council or the Registrar.

37. Control of Council by State Government.—If at any time it shall appear to the [State Government]⁶ that the Council has failed to exercise or has exceeded or abused a power conferred upon it by or under this Act or has failed to perform a duty imposed upon it by or under this Act, the [State Government]⁶ may, if it considers such failure, excess or abuse to be of a serious character, notify the particulars thereof to the Council ; and if the Council fails to remedy such default, excess or abuse, within such time as the [State Government]⁶ may fix in this behalf, the [State Government]⁶ may dissolve the Council and cause all or any of the powers and duties of the Council to be exercised and performed by such agency and for such period as it may think fit :

Provided that it shall take steps as soon as may be convenient to constitute a new Council in accordance with the terms of Section 4.

1. *Ibid.* by S. 37(ii).
 2. *Subs.* for [U. P. Govt. Gazette] by the A. O. 1937.
 3. *U. C. A. I.* Vol. I, p. 214.
 4. *Ibid.* Vol. II, p. 1.

5. *Ibid.* Vol. I, p. 74.
 6. *Subs.* by the A. O. 1950 for [Provl. Govt.] which had been *subs.* by the A. O. 1937 for [L. G.]

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